

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, Machinist G. A. Sabella (hereinafter referred to as Claimant) was unjustly dismissed from the Carrier's service on August 19, 1974.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, including insurance benefits, and with compensation for all wage loss from date of dismissal to date of restoration to service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as a machinist and last worked his regular shift on March 31, 1974. Carrier issued a letter dated July 24, 1974, which stated that Claimant was thereby notified to appear for formal hearing on August 8, 1974 in connection with his absence from work since March 31, 1974, "allegedly without proper authority", in violation of Rule 810 of the General Rules and Regulations and Rule 25(a) of the Mechanical Department Agreement.

At the commencement of the hearing on August 8, 1974, the Vice Local Chairman made the following request for postponement of the hearing:

"I do not think this hearing should be held today because Local Chairman Ray Hughes requested a postponement until Mr. Sabella could appear. This request was denied by Local Management. The information that Mr. Hughes received is that Mr. Sabella is in the hospital and unable to attend."

The Hearing Office, in effect, denied this request. Without comment on the application for postponement, he continued and completed the hearing in the absence of the Claimant. On August 19, 1974, Claimant was dismissed for violation of the rules mentioned above.

Petitioner contends that Carrier's refusal to postpone the hearing was unjustified and deprived Claimant of an opportunity to appear and present a defense against the charges in violation of the fair trial requirements of Rule 39 of the controlling agreement. Petitioner asserts Claimant notified his foreman of his absence as early as possible in compliance with Rule 25 of the agreement, and that Carrier's dismissal action is not supported by the record.

Carrier maintains that the denial of postponement of the hearing was reasonable and consistent with the fair trial requirements of Rule 39 in that Claimant was absent from work for a period in excess of four months prior to the hearing, could not be located, and "was given opportunity to surface and present a defense for his absence but did not elect to do so". Carrier asserts that there is substantial evidence in the trial record that Claimant's absence from work violated Rule 810.

The record does not support the Carrier's position with respect to the denial of the application for postponement of the hearing. The notice of hearing letter was sent by certified mail fifteen calendar days prior to the hearing date. Nevertheless, there is no evidence that this notice letter was delivered at the address to which it was sent by the Carrier, or that Claimant received it, or had knowledge of the hearing date. In the absence of such proof, it cannot reasonably be concluded that the Claimant "did not elect" to attend the hearing and present his defense, as asserted by Carrier.

The record discloses a course of events relating to Claimant's absence from work which indicated that the requirements for a fair trial mandated postponement of the hearing for a reasonable period. Early in April or May, 1974 (the foreman first mentioned the earlier date and then changed to the later date), Claimant notified his foreman that he was going to be admitted to a psychiatric hospital. The trial record also shows that prior to the hearing date, Carrier knew that Claimant was in such hospital and, at an unspecified time, had some information from an undisclosed source that he had been released from the hospital but had no report as to his "whereabouts". Under these circumstances, and considering that Carrier desired to bring to trial charges against Claimant based on his continued absence from work and thereby place his job in jeopardy, Claimant's representatives were, upon their request for a postponement, at least entitled to a reasonable opportunity

on his behalf to consult with him either at a hospital or to locate him elsewhere, if possible, and advise him of the ineluctable necessity for explanation of his failure to report for work at a rescheduled hearing.

Furthermore, the record shows that August 8, 1974 was the first hearing date fixed by the Carrier for Claimant "to cover" his absence from work. There is no evidence, or even a suggestion, that postponement of that initial hearing date for a reasonable period would have prejudiced or inconvenienced the Carrier or interfered with the efficiency and safety of its operations.

We are constrained to find that the action of the Carrier in refusing to grant postponement of the hearing for a reasonable period was arbitrary and deprived the Claimant of a fair hearing to which he was entitled under Rule 39 of the controlling agreement. For these reasons, the claim must be sustained pursuant to that rule except as to "insurance benefits" referred to in paragraph "2" of the claim which are denied. In accordance with the applicable rule, outside earnings shall be deducted in the computation of wage loss.

A W A R D

Claim sustained in accordance with, and to the extent indicated, in the foregoing Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of January, 1977.