

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

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company violated the controlling agreement, particularly Rule 34, when Carman O. C. McCloud was unjustly dismissed from service effective August 20, 1974.
2. That accordingly, the Southern Pacific Transportation Company be ordered to reinstate Carman McCloud to service with pay for all time lost beginning August 20, 1974, seniority rights, vacation rights, plus all other contractual rights to which he is entitled.

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 Carrier in the position of freight car painter at Houston, Texas. On August 9, 1974 Carrier wrote Claimant that he was charged with being absent on August 6, 7, 8 and 9, without permission, in violation of Rule 3 of the Rules for Employees of the Mechanical Department, and that the investigation of such charge was to be held on August 20, 1974. Claimant did not appear for the investigation on that date, and the investigation proceeded to a conclusion in his absence. Thereafter, Carrier issued a letter stating that the charge was sustained and that Claimant was discharged from the service of the Carrier.

Petitioner contends that Claimant was denied a fair and impartial investigation as required by Rule 34 of the controlling agreement in that he was ill and unable to attend the investigation and the Local Chairman's request for postponement was denied. Petitioner asserts that the investigation record fails to show that Claimant was guilty of any wrongdoing, and

that the investigation was fatally defective in that the Plant Manager cited the Claimant for investigation, conducted the investigation and assessed the discipline.

Carrier maintains that the investigation established the Rule 3 violation with which Claimant was charged, that Claimant "arbitrarily refused to participate in the investigation", that no evidence of illness of Claimant was presented, and no good reason for postponement of the hearing was suggested. With respect to the Petitioner's objection based on the participation of the Plant Manager, Carrier argues that this objection should be ignored in that it was not raised on the property and there is no evidence of bias or prejudice.

After careful examination of the record, we find Carrier's position persuasive.

The record compels the conclusion that on August 16, 1974 Claimant received notice of the charge against him and of the investigation to be held on August 20, 1974. Carrier's notice letter dated August 9, 1974 was sent to the Claimant by certified mail, return receipt requested. That Post Office return receipt indicates delivery of the notice letter on August 16, 1974. In the absence of contradictory evidence, and no such evidence appears in the record, the presumption of delivery established by the return receipt must be accepted as final. That two letters subsequently sent certified mail, return receipt requested, by Carrier to Claimant to advise him of his discharge were returned marked "unclaimed" does not impugn the validity of the Post Office receipt evidencing delivery of the notice of investigation to the Claimant.

The record does not disclose any evidence that Claimant was unable to appear at the investigation because of illness or that he made any effort to communicate with his representative or the Carrier prior thereto. The Local Chairman's request at the investigation for a postponement was based on the failure to hear from Claimant and not on the assertion that Claimant was ill. Under the circumstances shown by the record here, we cannot say that the denial of that request was improper.

Petitioner's objection relating to the procedural participation of the Plant Manager in connection with the investigation was not raised during the handling of the claim on the property. Numerous awards uniformly hold that we are required to limit our considerations to issues properly raised on the property.

Finally, we find that the record of the investigation discloses substantial evidence of the violation with which Claimant was charged. On the record considered as a whole, we conclude that the claim must be denied.

A W A R D

Claim denied.

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Award No. 7241
Docket No. 6980
2-SPT-CM-'77

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 11th day of March, 1977.