

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (Earl C. Grow, Electrician
(Penn Central Transportation Company

Dispute: Claim of Employee:

(A) CHARGES AGAINST CARRIER

- (1) That Carrier improperly suspended Electrician, Earl C. Grow on January 24, 1974, from services pending and subsequent to investigation, and;
- (2) That on February 12, 1974 the Carrier unjustly dismissed Electrician, Earl C. Grow from service, and;
- (3) That at the trial of Earl C. Grow, Carrier denied Claimants rights to make statements in his own behalf, and to call and examine witnesses, due to the presence of a tape recorder at the proceedings, the use of which is sanctioned by the Agreement nor by the past practice.
- (4) That Claimant was denied his right to appeal from Notice of Discipline as set forth in Rule 7-A-1 (a) of the applicable Agreement by Penn Central Railroads failure to notify Claimant of Notice of Discipline either orally or in writing.
- (5) Penn Central Railroad falsified statements of notification of dismissal of Earl C. Grow to his great detriment and loss.

(B) REMEDY SOUGHT

- (1) That Penn Central Railroad be ordered to compensate Earl C. Grow his applicable straight time rate of pay from January 24, 1974 to February 12, 1974 account improper suspension, and;
- (2) That Penn Central be ordered to compensate Electrician Earl C. Grow his applicable straight time rate of pay from February 12, 1974 and each work day thereafter until restored to service, account unjust dismissal, and;
- (3) That Electrician Earl C. Grow be restored to service with all seniority rights, benefits and privileges unimpaired, including vacation rights, made whole for all health and insurance benefits, and;

- (4) That Electrician Earl C. Grow be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and;
- (5) That Electrician Earl C. Grow, be made whole for any other benefits that would have been earned during the time he was held out of 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Petitioner and Carrier both allege procedural violations in the instant case. Carrier argues that the claim is barred under the time limit rule (Paragraph (a) of Rule 7-A-1) inasmuch as the appeal from discipline allegedly was not presented within 10 working days after Claimant was notified of the discipline imposed.

Petitioner states that Claimant was never timely notified by Carrier, either orally or in writing, relative to his dismissal. It is Petitioner's position that although the hearing was held on February 6, 1974, Claimant was never notified of his dismissal until September 11, 1974.

Carrier argues that Claimant refused to sign a G-32 Form on February 19, 1974, which contained notice of Claimant's dismissal "in all capacities". Carrier asserts proof of this is found in the affidavits from two (2) General Foremen and one (1) Assistant General Foreman, dated April 24, 1974.

According to Carrier, nothing was heard from Claimant or his representative until over five (5) months later, when the Superintendent of Labor Relations received the Local Chairman's letter of July 25, 1974, in which he requested a discussion of the status of Claimant.

While evidence of the notice of dismissal being sent to Claimant via certified mail might have eliminated this procedural controversy altogether, nevertheless, the Board is persuaded from an examination of the record as a whole, that Claimant was timely notified of his dismissal, but an appeal was not timely filed under Rule 7-A-1 of the Agreement.

Therefore, the Division has no alternative except to dismiss the claim for want of authority to hear and determine it upon the merits. Awards of this Division, too numerous to cite, have consistently so held under comparable circumstances.

A W A R D

Claim dismissed.

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 12th day of July, 1977.

