

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: ( System Federation No. 97, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Electrical Workers)  
( Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. J. R. Cuellar when they discharged him from service on September 12, 1975, as a result of an investigation held on August 29, 1975.
- (2) That, therefore, the Claimant be returned to the service of the Carrier with all rights, benefits and privileges restored.
- (3) That the Claimant be compensated for all time lost including overtime. Further that he be made whole for all lost benefits including, but not limited to, vacation rights, health and welfare benefits, insurance, Railroad Retirement and Railroad Unemployment Insurance and Sickness benefits and/or any other benefit or compensation he would have received or earned while 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 waived right of appearance at hearing thereon.

Claimant an Electrician Helper was notified September 12, 1975, as the result of an investigation held August 29, 1975, that he was being removed from service account of absence without permission August 4, 1975 to August 15, 1975, violation of Rule 16, Form 2126 Standard, General Rules for the Guidance of Employees, 1966 edition. Said Rule 16 reads:

"Employees must obey instructions from the proper authority in matters pertaining to their respective branches of the service. They must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations.

Employees must report for duty as required and those subject to call for duty will be at their usual calling place, or leave information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places without proper authority."

The record reflects that Carrier was notified on Monday, June 16, 1975 by the Santa Fe Hospital that Claimant was there seeking attention for an injury alleged to have occurred Friday, June 13, 1975. A Carrier's representative obtained Claimant's story therein. It appears that while in the process of descending from an overhead crane he slipped on a ladder rung and in the process of grabbing a ladder rung he strained his back.

After treatment and later completing and signing Form 1421, "Report of Injured Person", Claimant was asked to sign a Form 1516, "Leave of Absence Form". He did so after he cleared same with his local Committeeman. Copy of said Form, retained by Claimant, provided that said Leave of Absence had commenced June 14, 1975 and expired August 3, 1975, that he was expected to report thereon unless he had requested an extension of such leave of absence and that failure of compliance would lead to his dismissal.

Claimant's Superintendent of Shops, on August 18, 1975 notified Claimant that his leave of absence had expired and that his absence should be covered by an authorized leave of absence. Claimant made no request therefor.

Claimant reported to work August 19, 1975 with a Doctor's release. He worked August 19 and 20 but called in on August 21, 1975 to advise that he was unable to work because of his back.

Claimant, on August 19, 1975 signed a waiver of investigation and received fifteen demerits for failing to report, on June 13, 1975, the injury alleged to have occurred. Claimant was also notified on that date to appear for the investigation which resulted in the instant dispute.

The Board finds that Claimant had been accorded due process.

It also concludes that there was sufficient competent evidence to support Carrier's conclusion as to Claimant's culpability resulting in his violation of Rule 16. Claimant was absent on a leave of absence. Such

leave had expired. He did not request a renewal thereof. Claimant did not return to duty. Claimant was put on notice, specifically by the stub portion of his requested leave of absence request, that his leave of absence would expire on August 3, 1975. Also Rule 25 of the Controlling Agreement provided that:

"Leave of absences for more than ten (10) calendar days must be requested on designated form and approved by the authorized Company officer.

Employees failing to report for duty at the expiration of leave of absences will be subject to discipline."

Claimant admitted that he was familiar with the Rules in question. Lastly, Claimant had been disciplined three times previously for violations of Rule 16 in a span of less than four years prior to the incident here in question.

During the handling of this dispute on the property, Carrier indicated that it was willing to reinstate Claimant on a leniency basis without pay. The Board noted that the Claimant was also in another forum seeking damages resulting from his alleged injuries. Such claim covers the same period of time as the claim herein. Claimant had alleged therein that he cannot, as of yet, return to his former occupation. Such fact relieves Carrier of any financial liability in this proceeding.

Consequently, the Board will reinstate Claimant with his almost nine years seniority rights unimpaired but without any compensation whatsoever for the time out of service, subject to his passing the customary physical re-examination.

A W A R D

Claim disposed of as per 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 31st day of July, 1978.