

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( System Federation No. 6, Railway Employees'  
( Department, A. F. of L. - C. I. O. -  
( (Firemen & Oilers)  
(  
( Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That Laborer Kent McArthur was unjustly dismissed from service by the Belt Railway Company on June 29, 1977 following an investigation which was held on June 29, 1977.
2. That accordingly the Belt Railway Company be ordered to return Laborer Kent McArthur to work immediately with pay for all time lost, restoration of full seniority and all benefits he would have been entitled to.

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 dismissed from service after an investigative proceeding held on June 29, 1977 determined that he was guilty of insubordination toward the diesel foreman.

Claimant asserts that said termination was improper since he was not afforded an adequate opportunity to prepare properly for his defense or alternatively use a tape recorder to record the investigation.

Carrier on the other hand, argues that Agreement Rule 12 requiring the compilation of a stenographic record explicitly provides a mutually agreed upon transcription and review process to insure reportage accuracy. It avers that this practice has been consistently observed on this property. Moreover, it contends that scheduling the investigative hearing on June 29, 1977 was reflective of a long established understanding to provide a

suspended employee a prompt investigation to avoid unwanted unemployment. It noted that claimant could have easily requested a hearing postponement if he felt that he needed more time for preparation.

This Board has carefully reviewed the record and finds that claimant was given a fair and reasonable opportunity to conduct his defense. There was no showing that Rule 12 was ever burdensome or prejudicial or that a tape recorder was ever an alternative recording modality. Claimant could have easily availed himself of the option to request a hearing postponement, but instead on the morning of the investigation, objected to the conduct of the proceeding and walked out. The hearing officer, duly convened the investigation and after all the testimony and supportive arguments were completed, subsequently found claimant guilty of the charged specification.

Since we have thus concluded that the hearing was procedurally proper, we will not substitute our judgement for the substantive determination, in the absence of a clear and compelling showing of capricious or arbitrary conduct.

Claimant was found guilty of insubordination. His employment record dramatically reveals an historic indisposition to perform assigned duties or observe supervisory instructions. He was the subject of three other investigations prior to this infraction, but unfortunately the imposed progressive disciplinary therapy was unavailing. Accordingly, we have no alternative under the specific circumstances of this dispute but to deny the claim in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.