

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it improperly discharged Machinist S. D. Krajefski on February 14, 1977 as a result of investigation held on January 17, 1977.
2. That accordingly the Norfolk and Western Railway Company be ordered to restore Machinist Krajefski to service and make him whole for any and all losses retroactive to date of discharge.

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 was dismissed from service for "being absent without permission January 3, 1977, from 7:00 a.m. to 11:10 a.m. from your assignment in the Truck Shop, Decatur, Illinois". The record shows that Claimant was indeed absent without permission for the time specified. When he telephoned the Carrier's representative at 11:10 a.m. he was advised, in response to his request, that he could remain off duty the remainder of his shift, but there is no indication that permission was granted for absence from the first part of the shift.

As pointed out by the Organization and admitted by the Carrier, the submission to the Board by the Carrier dealt with a separate disciplinary matter involving the same Claimant, including the transcript of the hearing of the separate matter. The Board has disregarded this portion of the Carrier's submission. The Board, however, has received from the Organization the transcript of the hearing on the dispute before it, together with the

Organization's submission and rebuttals by both parties, as well as related exhibits. These are sufficient for the Board's resolution of this dispute.

The Organization raises strong objection to the fairness and propriety of the investigative hearing, since it was conducted in the absence of the Claimant.

To insure compliance with the well reasoned requirements for a fair hearing, especially in matters involving conduct and work performance by an employee, the greatest caution is required for a Carrier to proceed with an investigative hearing in the absence of the employee. Reasonable requests with logical justification for postponement from the Claimant and/or the Organization representing him deserve favorable consideration. Questions as to whether the Claimant and the Organization received due notice in proper time before the hearing must also be considered before proceeding without the employee. If the employee becomes unavailable for the hearing for good cause, even after receiving notice, there may well be cause for postponement if requested. See, as one example, Award No. 7201 (Rose).

In this instance, however, there is no question that the Claimant received notice of the hearing. He did not request a postponement, either directly to the Carrier or through his Organization. No reasonable excuse for his failure to appear was given, either at the hearing or subsequently. The Board will therefore find, as it did in Award No. 5987 (Dorsey):

"... When Claimant failed to appear at the hearing ..., after having been properly served with notice, he acted at his peril; and Carrier's proceeding with the hearing in his absence was not a denial of due process."

The Organization also raises vigorous objection to the reference by the Carrier to the Claimant's employment record, pointing out that this was "introduced into the proceedings for the first time when the highest officer of the Carrier denied the appeal submitted to him ..." The Board does not find that the Carrier used the Claimant's past record to determine whether or not he was guilty of the charge of absence without permission for half a day. It is fully established, however, that the Carrier may properly review an employee's past disciplinary record in assessing the severity of a penalty where responsibility for an act has been established.

In this instance, the Claimant had received a 30-day deferred suspension for "excessive absenteeism" and a 15-day actual suspension and a 30-day actual suspension for being "absent without permission". The Claimant was thus fully on notice concerning the consequences of his failure to meet attendance requirements, and the Board finds no basis on which to interfere with the Carrier's ultimate penalty of dismissal.


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 4th day of April, 1979.