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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7939
Docket No. 7733
2-BNI-EW-'79

J. W. GOHMANN

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, Traveling Electrician Joseph L. Pinson, Headquartered at Minot, North Dakota, was unjustly dismissed from service of The Burlington Northern Inc., on February 10, 1977.
2. That accordingly, the Carrier be ordered to compensate Traveling Electrician Joseph L. Pinson for all lost time, the record of dismissal be removed from his personal file together with restoration of any lost vacation time, railroad retirement benefits, holidays, sick day or hospitalization benefits and any other rights, privileges or benefits he may be entitled to under schedules, rules, agreements, or law.

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 the service of the Carrier for failure to comply with instructions from Director Mechanical on January 14, 1977, failure to protect his assignment on January 14, 1977 and being absent from his duties without proper authority.

The Organization takes the position that Claimant was not afforded a fair and impartial hearing as required by rule 55. It is claimed that the wording of the notice of the investigation itself reveals a prejudice on the part of the Carrier. The notice uses the words "failure" rather than "alleged failure". We do not find that this wording reflects a pre-judgement on the part of the Carrier. We must look to the total conduct of the discipline proceedings to determine if the Claimant did not receive a fair and impartial investigation.

The Claimant did not have a representative at the hearing. The Organization takes the position that when Claimant responded at the hearing that he did not have a representative, the Carrier was under some obligation to pursue the matter further. The Claimant has the responsibility for providing a representative for himself. The Carrier did not breach its duty in this regard.

The Organization further alleges that under Rule 35, the Carrier should have held the hearing at Minot, N.D., the headquarters of the Claimant. Actually Rule 35(c) contains language which is not mandatory. It provides that "Unless conditions or circumstances warrant other arrangements, efforts will be made to hold the investigation at the city where the employee is headquartered." The conditions and circumstances in the instant case were that Claimant had moved to Chicago and announced he would be taking a five (5) year leave of absence. Minneapolis, Minnesota was seen by Carrier as a convenient location for all parties. Further, at the time of the hearing Claimant did not object to the location. We can find no error on Carrier's part in this regard.

Claimant makes certain other allegations as to procedural defects. We are unable to conclude, however, that the hearing was defective. There was no error committed by the Carrier, such as would constitute grounds for a reversal of this case based on procedural issues.

The merits of the case are on the side of the Carrier. The transcript of the proceedings support the Carrier's finding of guilt on the part of the Claimant. Dismissal is not an inappropriate remedy for this Claimant.

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 24th day of May, 1979.