

The Second Division consisted of the regular members and in addition Referee Bernard Cushman when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Electrical Workers)  
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company is violative of Rule 32(a) and (b) and has unjustly dealt with and damaged Electrician Apprentice G. L. Harmon when they denied him the right to a fair and impartial hearing on September 30, 1976 subsequently dismissing him from the service of the Carrier by notice number 808 dated October 1, 1976.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Mr. G. L. Harmon, Jr., as follows:
  - (a) Compensate for all time lost plus 6% annual interest;
  - (b) Return to service with seniority rights unimpaired;
  - (c) Made whole for all vacation rights;
  - (d) Made whole for all health and welfare and insurance benefits;
  - (e) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance;
  - (f) Made whole for any other benefits that he would have earned during the time withheld from service;

and, further, any record of this disciplinary action be removed from his personal record.

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 G. L. Harmon was employed as an Electrician Apprentice at Carrier's Mechanical Facility, North Little Rock, Arkansas. On September 30, 1976, a work day for the claimant, he reported late for his assignment which began at 7:00 a.m. Claimant did not inform anyone that he would be late and spoke to no one until after his arrival, 7:15 a.m., when he spoke to his supervisor, Electrical Foreman E. F. Jones, who asked him why he was late. There is a dispute as to just what was said. Thereafter, the claimant worked for 3 hours and then left the job for the day on account of illness. The claimant was given a notice of a formal disciplinary investigation "to develop the facts and place your responsibility, if any, for allegedly being tardy to your assignment, Monday, September 20, 1976 without proper authority and a review of your attendance personal record files".

The investigation was held on September 30, 1976. Thereafter, on October 1, 1976, the claimant was issued a discipline notice stating that he was dismissed. The notice stated that he had been marked dismissed "account of failure to report to your job at assigned starting time on September 20, 1976; being tardy without property authority, and your past record of tardiness and absenteeism; also, your failure to comply with requirement of item #5 of Conditions of Employment."

The record shows and the Board finds that the claimant was in fact tardy and did fail to inform anyone in timely fashion that he would be tardy. The claimant was, however, no more than 15 minutes late and asserts that he arrived only a few minutes after the starting time of his assignment. The record also shows that the claimant had a past record which showed that he had been counseled and twice disciplined for attendance-related offenses.

The Organization attacks the dismissal as improper and claims that Rule 32 (a) and (b) which provide for fair hearing and notice was violated. Rule 32 (a) and (b) - Discipline - Investigation, reads as follows:

"(a) An employe covered by this agreement who has been in service more than 30 days, or whose application has been formally approved, shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad. He may, however, in proper cases, be held out of service pending such investigation which shall be promptly held.

(b) At a reasonable time prior to the investigation, the employee will be apprised of the precise charge against him and the time, date and place set for the investigation. The employee shall have a reasonable opportunity by this notice to secure the presence of necessary witnesses, and representation if he so desires. A copy of the notice directing the employee to report for investigation shall be furnished to the local chairman of the craft involved, but failure to furnish the local chairman with copy of the notice shall not constitute a violation of this agreement or provide any basis for a contention that the notice to the employe to report for investigation was defective."

First, the Organization claims that the employe's request for advance observation of the personal file of the claimant was not granted. The notice of investigation did indicate that the past record of the claimant would be reviewed. The failure to grant a pre-hearing review of that record was not in itself prejudicial. The Organization had an opportunity to review claimant's attendance record at the hearing or to request a recess during the course of the investigation, but made no such request. It must be concluded that there was no prejudice to the claimant in this respect.

The Organization's claim that the notice of investigation did not apprise the claimant adequately of the offense charged or of any Rule violation is found without merit. The notice clearly indicated that the basis of the notice was the tardiness of September 20, 1976. The Organization also claims that by allowing the claimant to work after his late arrival for a period of 3 hours and then giving him permission to leave because of illness, the Carrier in effect sanctioned all movements of the claimant and, in effect, accepted his late arrival. That contention is without merit. Since it was still early in the claimant's shift, the Carrier need not be required to send the claimant home at once as a condition precedent to the imposition of discipline.

The Board does not view the finding by the Carrier of a violation of Item #5 which was not cited in the charge as constituting a procedural defect under the circumstances of this case. Item #5 merely requires an employee to know and comply with the rules governing his job. See the Award of this Board, No. 7560. And the failure to mention Item #5 in the charge did not run afoul of the strictures of Rule 32.

The Board does, however, find that the imposition of so harsh a penalty as dismissal for a tardiness of less than 15 minutes is too severe a penalty. On the basis of the whole record, the Board orders the claimant reinstated without impairment of seniority rights but without back pay.

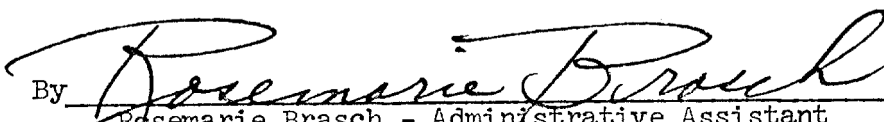
A W A R D

Claim sustained to the extent that the claimant shall be reinstated without impairment of seniority rights but without back pay.

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 20th day of June, 1979.