Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8381
Docket No. 8359
2-CR-EW-'80

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That under the current agreement, Electrician Serge Bartlatier was unjustly dismissed from the service of the Carrier on date of July 10, 1978.

2. That, accordingly,the Carrier be ordered to reinstate Electrician Serge Bartlatier to his former position with seniority rights unimpaired and compensation for all lost time.

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 discharged from service on August 10, 1978, allegedly as a result of "(E)xcessive absenteeism: On all working days from June 16th, 1978 through July 8th, 1978".

On July 10, 1978, Claimant was sent a Notice of Trial Form, G-250, instructing him to attend a hearing on July 19, 1978, on the matter of his impending discharge. Said notice was sent by Certified Mail with receipt requested and was received and signed for by one "Muriel Gilbert", with date of delivery indicated as July 11, 1978. A hearing on the matter was held as scheduled; however, the Claimant did not attend the hearing.

Insofar as Claimant did not attend the hearing which was held on July 19, 1978, and said hearing was not postponed as per Organization's request but instead was conducted in absentia, Claimant's Organization contends that, irrespective of the initial charges against him, Claimant was denied a fair and impartial hearing in this matter, and his subsequent discharge, therefore was unjust and improper under the terms of Rule 6-A-1.

Organization maintains that Claimant did not attend the July 19 hearing because he was not properly notified of the hearing, and thus, he was denied "his day in court". Specifically and simply, Organization argues that since certified letter was received by "Muriel Gilbert" and not by Claimant himself, then this fact "does not establish any positive proof that Claimant had received a notice of trial". Organization further contends that subsequent to the disputed hearing additional information relating to Claimant's reason for being absent was submitted to Carrier, but Carrier improperly refused to accept "this new information".

Carrier contends that Claimant's charge of excessive absenteeism is supported by substantial evidence and, as such, the penalty of discharge is appropriate, particularly when, as in the case at hand, the Claimant had been disciplined previously for similar offenses.

Regarding Organization's contention concerning the alleged unfairness of the in absentia hearing, Carrier contends that all procedural requirements of properly notifying Claimant of his impending trial were met in this instant case; and, according to Carrier, having fulfilled such requirements the "mere fact that Claimant's representative maintains that Claimant was never informed of the proceedings is of no consequence inasmuch as it has long been held that Carrier cannot be held to be an insurer of receipt of notice".

Lastly, Carrier argues that Organization's reference in its Rebuttal Statement to the reason for Claimant's extended absence is improper since such information was not presented by Organization at any of the preliminary stages of the handling of this matter. Therefore, Carrier contends that this information is new evidence and, as such, it is inadmissible at this level.

As this Board views this instant case, there is but one critical question to be disposed of and that is: "whether the Claimant was properly notified of the scheduled hearing". The ancillary issues which have been raised by the parties are not of vital significance to warrant a prolonged analysis, but, so that the record may be complete, suffice it to say that: (1) this Board affirms the premise that excessive absenteeism, when proven by substantial evidence, is a dischargeable offense; (2) the scope of this Board's review does not extend to issues which were not raised on Carrier's property; and (3) the facts of this case lead this Board to conclude that there is a substantial quantum of proof to determine that Claimant is guilty of excessive absenteeism as charged.

Now back to the critical question of the "adequacy of the notification of hearing".

The resolution of this dispute focuses upon the application of a Company policy which, in general, states that a notice of hearing is to be "sent by certified mail, return receipt requested, to the Claimant's last known address on record". Organization does not dispute the validity or reasonableness of this particular rule; nor does Organization contend that Carrier failed to follow said rule. In similar fashion, Carrier does not contend that Claimant is "hiding out" to avoid receipt of said notice so as to delay the hearing. Thus we are left with the basic question of the thoroughness or diligence which is required of Carrier when issuing a "notice of hearing".

Upon a careful analysis of the complete record in this matter the Board is persuaded that Carrier satisfied both the letter and the intent of its rule. The disputed notice was sent out according to the format which was prescribed; it was sent out in timely fashion; and it was sent out with the intent of reaching the Claimant. There is nothing in the record which would suggest that Carrier failed to comply with its rule in any way; nor is there any hint in the record that Carrier purposely connived to circumvent said rule so as to place the Claimant in a disadvantageous position. Furthermore, were this Board to accept the Organization's argument in this particular aspect of this case, the logical interpretation would be that said notice would be valid only if it were actually delivered to the person for whom it was intended. Such an interpretation would indeed be limiting, and would clearly be at odds with the existing rule which, in itself, recognizes that, in some instances, such deliveries might not be possible; hence the requirement that the delivery would be made to the employee's last known address of record. Clearly, had Carrier intended any greater limitation upon itself than that which the contested rule presently entails, then this Board is confident that Carrier would have clearly articulated that intention.

The above posited analysis conforms in large part with numerous awards which have been decided previously by several other Boards in this and various of the other Divisions (See: Second Division Award No. 8187; Third Division Awards No. 13941, 18395, 22065, and 22500). Therefore, on the basis of these previous awards and the specific facts of this case, this Board concludes that Carrier properly notified Claimant of the scheduled discharge hearing, and thus the claim which has been presented will be denied 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of June, 1980.