

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the controlling agreement, particularly Rule 35, when they unjustly dismissed Sheet Metal Worker John Hiller from service following investigation held on January 15, 1979.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate Sheet Metal Worker Hiller as follows:
 - a) Compensate him for all time lost from December 18, 1978, until returned to service;
 - b) Restore him to service with all seniority rights;
 - c) Pay premiums for hospital and medical benefits;
 - d) Pay premium for group life insurance;
 - e) Pay 6% interest on all back wages.

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, a water service mechanic, was discharged from service for alleged absence from his assigned duties during the period December 20, 1978 to January 8, 1979. Pursuant to proper notice, a hearing was held on January 15, 1979. Though he received both oral and written notice, claimant did not attend the investigation.

The organization raises an array of purported procedural deficiencies in the hearing process which, according to the organization, operated to deprive the claimant of a fair hearing. This Board, after carefully reviewing the record, concludes that the claimant received a fair and impartial hearing in accord with

Rule 35 of the applicable agreement. We have also considered each of the organization's five procedural objections to the hearing. First, the claimant's failure to attend the investigation does not automatically render the hearing process impotent. Otherwise claimants would rarely appear at an investigation. The claimant's "stuck in the snow" excuse is hardly persuasive since he lived only five blocks from the hearing site. Furthermore, he had oral notice of the investigation (on January 8, 1979 when the hearing date was set) and written notice by registered letter dated January 8, 1979. In spite of claimant's absence, the Local Chairman presented an excellent, though unsuccessful, defense on the claimant's behalf. Second, the absence of witness Pyatt did not undermine the integrity of the hearing process because his failure to appear was the fault of neither the carrier nor the organization. The carrier notified Pyatt, an employee who was being held out of service, that attendance at the hearing was mandatory. But, the carrier is not empowered to physically compel witnesses to come to the hearing. In any event, Pyatt was not an indispensable witness because documents in his handwriting were sufficiently authenticated and identified by other witnesses at the hearing. Third, the carrier comes very close to upsetting the fairness of the hearing by its inexplicable failure to promptly relay an urgent telephone message to the Local Chairman during the hearing. The message, from the Local Chairman's wife, concerned claimant's inability to attend the hearing due to the snow. As we discussed, above, claimant's excuse is totally baseless. While this Board has determined that delivery of the message would not have altered the results of the hearing, the carrier should be aware that this Board will not tolerate carrier attempts to unreasonably manipulate the hearing. The carrier's action here falls very close to such manipulation. Fourth, the hearing officer properly restricted the scope of the organization's cross examination to subject matter relevant to the inquiry. To maintain an orderly hearing process, the hearing officer should preclude questions relating to tangential events. Lastly, though the conducting officer who also assesses discipline against the claimant does so at his own peril, we find the multiple role did not prejudice the claimant. Thus, we must overrule each of the organizations five alleged procedural defects.

On the merits, the carrier presented substantial evidence to support the excessive absence charge. On December 18, 1978, the claimant was absent and he called his foreman to say he was moving but he would report to his assignment the next day. He failed to show up for the next four days and did not call in until after December 22, 1978. In the past, the claimant had been repeatedly warned that consistent failure to report to his assignment would lead to formal disciplinary action. On July 25, 1977, the claimant signed and acknowledged a written warning regarding his excessive absence without proper authority. The record discloses that, rather than improving his attendance record, the claimant adopted a lackadaisical attitude about reporting to his assigned duties. He was absent often for spurious reasons and, on many occasions, did not give any reason for his absence. Similarly, in light of claimant's poor prior record, the carrier's decision to discharge the claimant is commensurate with the offense. In the notice dated January 8, 1979, the claimant was properly apprised that his prior attendance record would be considered in determining the penalty if the charges should be sustained. Therefore, we will not reverse the carrier's assessment of discipline.

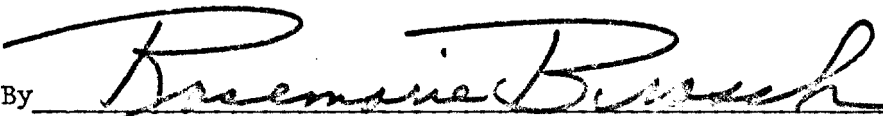
A W A R D

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 3rd day of December, 1980.