

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

Parties to Dispute: { International Brotherhood of Firemen & Oilers  
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

M. Marullo, Relief Stationary Engineer, Cos Cob Power Plant, Cos Cob, Connecticut, Consolidated Rail Corporation, unjustly dismissed for unauthorized absence since March 20, 1978.

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, a relief stationary engineer at the carrier's Cos Cob Power Plant, was discharged on May 30, 1978 for a continuous unauthorized absence since March 20, 1978. The claimant failed to appear at the investigation held on May 23, 1978.

On March 20 and 21, 1978, the claimant reported to the carrier that he could not work due to illness. On March 22, 1978, the claimant informed the carrier that he would not report to work, until further notice, alleging he was ill. After the Chief Stationary Engineer and the Mechanical Supervisor observed claimant at local shopping areas, the Chief Stationary Engineer sent a letter dated May 1, 1978 to the claimant, by certified mail, instructing the claimant either to substantiate his purported continuing illness with appropriate medical evidence or to return to work by May 11, 1978. The claimant, who received the letter, did not comply with either instruction. On May 12, 1978, the carrier sent a notice of investigation, by certified mail, to the claimant. The post office made several attempts to deliver the notice. Through no fault of the carrier or the postal system, the claimant did not actually receive the notice until after the investigation had been held.

The organization initially contends that because the claimant never received actual notice of the May 23, 1978 investigation he was deprived of his right to a fair and impartial hearing. We disagree. Rule 20(d) imposes an obligation on the carrier to provide the accused employee with reasonable advance written notice. The carrier is not the guarantor that the claimant will receive actual notice. Sending a notice by certified mail to claimant's residence is reasonable. Further-

more, if the claimant had been more diligent in retrieving his mail from the post office, he would have known about the investigation. He is estopped from blaming the carrier for his own dilatory conduct.

On the merits, there is substantial, indeed overwhelming, evidence that claimant was continuously absent since March 22, 1978 without proper authority in violation of Rule 13. The organization contends that the claimant was absent for good cause, i.e. illness. Inexplicably, the claimant forwent two opportunities to demonstrate that he was genuinely ill. He ignored both the May 1, 1978 letter and the notice of hearing. Belatedly, the organization has presented this Board with an invoice for medical services from claimant's physician showing treatment for bursitis. While we are precluded from reviewing evidence which was not offered at the hearing or on the property, we note that the invoice lists only one medical examination and that occurred on March 16, 1978. If the claimant's illness was both continuing and incapacitating, there should be invoices for examinations after March 22, 1978. Yet, such invoices were not presented during the investigation.

The carrier has acted prudently in all respects in this case. It only questioned the claimant's absence after he was observed at the shopping areas in apparently good health. On May 1, 1978, the carrier provided claimant with a chance to justify his absence. After forty days of continued absence without receiving any substantive excuse from the claimant, it was reasonable for the carrier to dismiss the 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 29th day of April, 1981.