

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Wesley M. Chrest was unjustly dismissed from service on November 6, 1978.
2. Carman Wesley M. Chrest was deprived of an investigation as per the provisions of Rule 35(a).
3. That the Chicago and North Western Transportation Company be ordered to reinstate Carman Wesley M. Chrest with all seniority rights, vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired; compensate him for all time lost; and reimburse him for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of service.

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 Carman at Carrier's Clinton, Iowa, Car Shops, applied for a Leave of Absence on or about April 27, 1977, citing "Personal Illness". Said leave was granted by Carrier and later it was extended from August 28, 1977 to February 28, 1978. On February 28, 1978, the expiration date of his leave of absence, Claimant had not yet reported for work nor had he filed for a second renewal thereof. On November 6, 1978, Claimant still had not yet contacted Carrier regarding his leave status and so Carrier's Superintendent at Clinton, Iowa facility wrote a letter to Claimant informing him as follows:

"... in view of your failure to renew your application for leave of absence which expired on February 28, 1978 and your failure to protect your assignment since that date, your name is being dropped from our roster and your employment relationship is terminated."

Thereupon, a claim was filed on December 4, 1978, by Organization on Claimant's behalf protesting the termination. Said claim was denied by Carrier and now is the basis of the instant dispute.

Organization's basic contentions in this dispute are that Claimant was unjustly dismissed and that he was denied a hearing. In support of its position, Organization maintains that Carrier's termination of Claimant was a violation of Rule 35(a) of the parties' Agreement in that: (1) Carrier completely failed to conduct a hearing in this matter, and (2) Carrier's termination letter of November 6, 1978, which was directed to Claimant, was not issued within "... 30 days from the date information concerning the alleged offense has reached the supervising officer" (i.e. -- the February 28, 1978 expiration date of Claimant's Leave of Absence). Continuing on, Organization also argues that Carrier's actions were further violative of Rule 35 of the Agreement which, according to Organization, provides that an employee on leave of absence will have a "privilege of renewal". In this regard, Organization contends that while on leave, Claimant was arrested and incarcerated, and that when his local representative requested an extension of his leave of absence in his behalf, Carrier refused to grant such an extension.

Carrier's basic contention in this dispute is that the investigatory hearing referred to in Rule 35(a) applies only to cases involving disciplinary matters, and that the instant case is not such a type of case. Thus, Carrier maintains that it (Carrier) "... is not required to hold an investigation in circumstances where an employee fails to return to the Carrier's services after expiration of his leave of absence". In further support of its basic contention, Carrier next asserts that: (1) as per Rules 19 and 20 of the parties' Agreement, the Leave of Absence form which was signed by Claimant, both at the time of his original request and his August 28, 1977 renewal thereof, contained a proviso which clearly specified "... that failure to report for duty on or before expiration date will result in loss of seniority rights and possible pension benefits"; and (2) Claimant's failure to renew his leave of absence was due to the fact that he was incarcerated at the time as a result of a shooting incident with the local police in which a policeman was shot.

In summary of its position, Carrier maintains that as a result of Claimant's failure to renew his leave of absence when it expired on February 28, 1978, his employment relationship, and all rights pertaining thereto, ceased to exist at that point (Second Division Awards 486, 6338; Third Division Awards 12993, 16859 and 20086).

The Board, upon a careful and complete review of the total record which has been presented in this dispute, is convinced that the specific issue which is involved is not one to which the hearing procedures specified in Rule 35(a) were meant to apply. Or perhaps as was stated most cogently and succinctly by Referee Hall in Third Division Award 12993, "(A)n employee removing himself from a Carrier's service by his own voluntary act cannot be held to have been discharged from such service by Carrier as a disciplinary act".

Of even greater significance than the foregoing, however, the record clearly shows that Claimant's renewed leave of absence expired on February 28, 1978, and neither he nor any agent functioning on his behalf petitioned Carrier requesting a second extension thereof either on or before the expiration date of the leave itself. Though Organization alleges that Claimant's "... local representative requested an extension of his leave of absence in his behalf, but Carrier refused to grant such an extension", there is no supportive evidence whatsoever in the record which would substantiate that such a request had ever been made; or, if so, if said request was made either on, before or after the expiration date of the disputed leave itself. Absent any such showing, the claim cannot be supported.

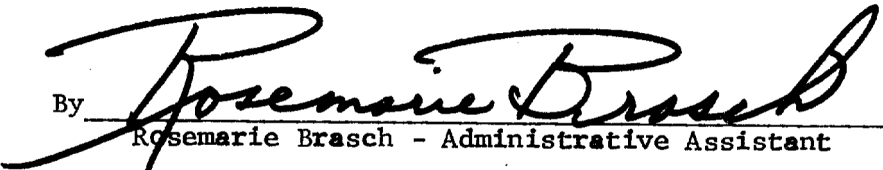
A W A R D

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 February, 1982.