

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) violated the current Agreement as amended, effective September 1, 1975, in particular Rule 23 when it unjustly dismissed Electrician McLynn Craig from the service of the Carrier on December 5, 1979.
2. That, accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to reinstate Electrician McLynn Craig with all rights unimpaired, his record cleared of the charge, and paid for all time lost.

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 was notified by registered mail in a letter dated November 5, 1979 that a formal investigation was scheduled to be held on November 15, 1979 on the charges of violating Amtrak Rules of Conduct "K" and "L" (absenteeism). Because the Carrier did not receive the return receipt card, on their own motion, the Carrier continued the formal hearing until November 29, 1979 (by letter dated November 15, 1979).

The hearing was held on November 29, 1979 without the Claimant in attendance. Just prior to the start of the hearing, the Organization's representative requested a continuance which was denied. The hearing went forward without the Claimant or his union representative in attendance. At the investigation, the only witness was the Carrier's Lead General Foreman, Mr. J. Schuch, as well as the Investigating Officer Mr. J. J. Pierce.

The Organization contends that: 1.) the Carrier, without cause, postponed the first hearing; 2.) that the postponement exceeded the time limit as prescribed in the Agreement; and, 3.) that the hearing, held without the Organization's representative or the Claimant, resulted in an unfair and not impartial hearing.

The Organization's first contention is found not to have merit in this instance. The continuance was issued because the Carrier was unsure as to whether or not the Claimant had received proper notice as called for in the Agreement. Because no return receipt had been signed by the Claimant, the Carrier postponed the date of the hearing. This action is clearly in the best interests of the employee. To hold otherwise would tend to undermine long standing due process opinions of this Board as well as to interfere with substantial employee rights.

The second claim of the Organization is that the hearing exceeded the allowable time period as specified in the Agreement. This contention also must fail for the same reasons as stated in the paragraph above. Twenty four days had elapsed from the date of the first letter until the date of the hearing. Rule 23 cannot reasonably be interpreted to mean that the Carrier is an insurer of the receipt of notice by the addressee, and that, therefore, no investigation may be properly held until after notice is, in fact, received. It is clear and readily apparent from the procedural steps taken in this matter, that if anything, they would have operated to the best interests of the Claimant. Thus, the Organization's second contention cannot be upheld.

Lastly, the third claim of the Organization is that the Claimant was not given a fair and impartial hearing. For reasons presented in the previous text, this claim too must be denied. Hearings held with the employee in absentia have long been held by this Board to be permitted as well as to be fair and impartial, where, in fact, all procedural requirements of the Agreement protecting the interests of the employee have been complied with and evidence is presented that clearly supports the charges. In this particular claim, the Organization elected not to participate. Nothing in the record indicates that there was an abuse of discretion on the part of the hearing officer, nor that such testimony given was improper or under bad motivation, nor was there arbitrary or capricious behavior.

Therefore, we must deny the Organization's three claims as well as to uphold the ruling of dismissal based upon the employee's failure to protect his assignment without notice to the Carrier and also in light of the employee's previous disciplinary record over a period of time and his 15 day suspension for the same Rule violation just three months prior to this investigation.

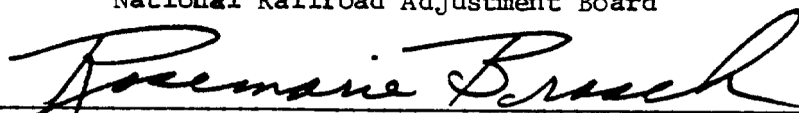
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June, 1982.