

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it unjustly dismissed Electrician Gary D. Lohrke on April 9, 1980 for alleged failure to protect his assignment.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician G. D. Lohrke whole by reinstating him to service with all seniority and other rights unimpaired and compensating him for all lost wages and benefits and clearing his record.

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, Electrician Gary D. Lohrke, was hired on January 9, 1979. He was charged with failure to protect his assignment January 19th through January 31st and February 2nd through 29th, 1980; and with failure to notify his foreman as early as possible that he would not be present for work. A hearing was held on March 24, 1980, and Claimant was dismissed on April 9, 1980 for failure to protect his assignment.

The organization contends that Claimant did not receive a fair and impartial hearing because Claimant was not present nor was the Local Chairman present at the hearing. After a careful review of the entire record the Board concludes that Claimant did receive a fair and impartial hearing. Claimant was duly notified by mail, as was the Local Chairman, of the charges and the time and place of the hearing. That he did not respond, and presumably failed to contact his local representative, is accounted for by his conviction and incarceration during this period. That Claimant neither reported for work or for the hearing is the result of circumstances over which he had sole control. As Referee R. E. Dennis, in Second Division Award 8315, stated: "On numerous occasions, this Board has stated that incarceration is not considered unavoidable absence from work for good

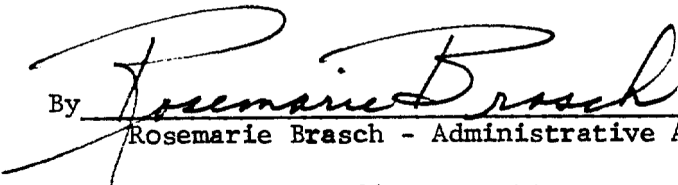
cause. In these instances, carriers were upheld by this Board if discharge resulted from the inability of an employee to appear at work because he was in jail as a result of a crime he committed." There was substantial evidence to sustain Carrier's determination to discipline Claimant. Given the long period of absence, a prior 10 day deferred suspension for attendance, and his short tenure with the Carrier, dismissal was justified.

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 13th day of July, 1983.