

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

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Denver & Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, E. C. Titus was unjustly dismissed from Service of the Denver & Rio Grande Western Railroad Company on January 30, 1981.
2. That accordingly the Carrier be ordered to reinstate claimant to his former position with Seniority rights unimpaired, made whole for all vacation rights, pay premiums on Group Life Insurance, Hospital Association Dues, premiums for all pension benefits, and pay for all time lost from Carrier Service, retroactive to January 30, 1981.

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 employes 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 dismissed from the service of the Carrier on January 30, 1981, following a formal investigation which was held on January 22, 1981, on the charges of alleged failure to maintain the study schedule requirements in accordance with Rule 34 (u) of the controlling Agreement. The Organization contends that the Claimant failed to receive a fair and impartial hearing, that the dismissal was arbitrary and capricious, that there has been a violation of Rule 32(f) of the controlling Agreement, that the Carrier has failed to meet the burden of proof, and that the Carrier failed to permit the Claimant to secure organizational representation at an alleged informal disciplinary meeting. The gravamen of this dispute centers on Claimant's alleged violation of Rule 34 (u) of the controlling Agreement which provides that when an apprentice is three months or more delinquent in his study schedule examinations, he or she may be removed from service and dismissed as an apprentice.

The Carrier disputes the contentions of the Organization in every respect, and further contends that the Organization has failed to comply with Rule 32 (c) and (d) of the controlling Agreement. For the reasons contained below, this Board finds it unnecessary to rule on the procedural arguments propounded by the Carrier.

The pertinent portions of Rule 34 (u) are stated below:

"The following rules shall govern the technical training of all apprentices:

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- (3) An apprentice who accumulates three uncleared delinquencies (three separate months), is subject to removal from the service after proper investigation is held, as provided for, in conjunction with the Local Committee.

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- (5) If an apprentice accumulates three uncleared delinquencies a second time, he will be given an investigation as provided for in System Federation No. 10 Agreement, in conjunction with the Local Committee, and if it is proven that such apprentice was three months delinquent a second time, he will be dismissed as an apprentice."

Sufficiently credible evidence exists on the record before us which indicates that the Claimant had been delinquent in his lessons for the months of October, November and December, 1980 and January, 1981, a total of four months behind in his lessons. Furthermore, this Board agrees with the determination of the hearing officer at the formal investigation that the Claimant was well aware of the procedures by which he should have notified the Railway Educational Bureau in Omaha, Nebraska.

"Sufficient evidence was adduced including claimant's admissions to support Carrier's conclusions as to his culpability." (Second Division Award No. 7778)

Long standing precedent and numerous awards of this Board have consistently held that this Board is not a trier of fact. Absent arbitrary, capricious or discriminatory behavior or an abuse of managerial discretion, this Board will not upset the findings as adduced by the hearing officer at the formal investigation.

This was not the first time that the instant Claimant faced similar charges. The Claimant had been in the apprenticeship program since March 12, 1979. In December of 1979, a formal investigation was held with respect to Claimant's failure to maintain his apprentice study requirements. At that time, he was found responsible for this failure and received a discipline of 30 demerits. We find Referee Marx's decision in Second Division Award No. 7991 particularly applicable to this dispute:

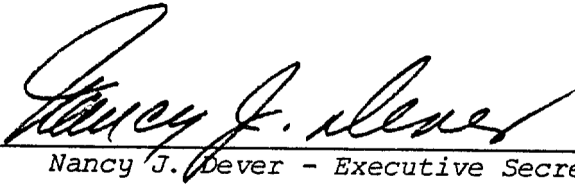
"Claimant fell woefully behind in completing his correspondence lessons almost from the outset of the program. After a warning and later an investigative hearing, Claimant was initially dismissed from service on October 12, 1977. Two days later, he advised the Master Mechanic that he had completed all overdue lessons and was mailing them to the Educational Bureau. On the strength of this statement, he was reinstated. It later developed, however, that the Claimant had, in fact, not submitted all overdue lessons, as further reports from the Educational Bureau continued to report Claimant behind schedule. Consequently, after a further hearing, Claimant was dismissed from service on December 1, 1977, for failing to maintain satisfactory progress in the training program."

For the reasons stated above, we cannot find merit in the claim of the Organization. The instant Claimant was well aware of the procedures to be utilized in cases of changes of address, and had specifically received a serious warning in the form of 30 demerits for virtually the same charge. We further find that the Claimant's dismissal from service was required under the terms of Rule 34 (u)(5) which states that dismissal is mandatory having been found for the second time delinquent in three or more Railway Educational Bureau lessons. (See also Second Division Awards 8494, 8929, and 7287).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1984