

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( System Council No. 7  
( National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) has unjustly dismissed Electrician Joseph Episcopo from service effective February 17, 1981.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Joseph Episcopo to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period, and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole, or to expunge 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 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.

Prior to the occurrence giving rise to the claim herein, claimant was employed by the Carrier as an electrician at its Wilmington, Delaware, Maintenance Facility.

Claimant marked off because of alleged personal illness on July 13, 1980. On January 23, 1981, claimant was notified to appear for a formal investigation to be conducted on January 29, 1981, on the charge:

"Charge: Violation of Rule 'K' of the N.R.P.C. Rules of Conduct and violation of that part of Rule 'Y' of the N.R.P.C. Rules of Conduct, reading as follows: 'Employees must obey instructions from their supervisor in matters pertaining to their respective branch of the service...'

Specification: By letter dated December 19, 1980, you were instructed to furnish the Company with evidence of physical incapacity in the form of a medical statement signed by a medical doctor by 3:00 P.M., January 7, 1981, which you have failed to do."

At the request of the Organization, the investigation was postponed until February 6, 1981, at which time it was conducted but claimant did not attend, although his representatives were present. Following the investigation, claimant was notified of his dismissal on February 17, 1981.

Carrier's Rules "K" and "Y", referred to in the letter of charge dated January 23, 1981, read:

Rule K:

"Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor."

Rule Y:

"Employees must obey instructions from their supervisor in matters pertaining to their respective branch of service, and employees whose duties require them to conform with instructions issued by various departments must familiarize themselves therewith and be governed thereby."

In the investigation, evidence was presented that the Shop Superintendent, Mr. R. D. Caudill, had written claimant, along with other individuals who were marked off sick, on October 24, 1980, in order to complete the vacation schedule. Claimant did not reply. The Shop Superintendent wrote him again on November 5, 1980, but received no response. On December 18, 1980, it was discovered that the address that Carrier had on file for claimant was not correct, and claimant's correct address was given to the Company at that time. On December 19, 1980, the Shop Superintendent wrote claimant, certified mail, that unless claimant presented by January 7, 1981, at 3:00 P.M., evidence of a physical incapacity to explain his absence, he would be considered out of the service. On January 7, 1981, claimant was on the property wanting to "make a bump." At that time appointments were made for him to see his personal physician and the Company physician the following day. Claimant failed to keep either appointment, and on January 23, 1981, the charge heretofore quoted, was sent to claimant certified mail and a receipt received showing delivery of the letter of charge. The record also contains a return receipt for the letter rescheduling the investigation to February 6, 1981. Claimant did not attend the investigation on February 6, 1981, or request a

postponement. There is nothing in the record showing that claimant was disabled from attending the investigation, or requesting a postponement.

The Organization complains that the investigation was conducted in claimant's absence. Many awards have been issued by the Board upholding the conducting of investigations "in absentia". Claimant's failure to appear after proper notice, or to request a postponement, was at his peril. See Third Division Award Nos. 24609, 24550 and 24546.


There is no proper basis for the Board to interfere with the discipline imposed by the Carrier. The claim will be denied.

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 6th day of June, 1984