

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Metro-North Commuter Railroad
(Consolidated Rail Corporation)

Dispute: Claim of Employees:

1. That under the current Agreement, the Consolidated Rail Corporation (Conrail), unjustly dismissed Electrician (Lineman) S. J. Caruso from service effective April 19, 1982.

2. That accordingly, the Consolidated Rail Corporation (Conrail), be ordered to restore Electrician (Lineman) S. J. Caruso 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 (Lineman'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; and 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.

The Claimant, an Electrician (Lineman) entered the service on December 9, 1974. During March, 1982 he was employed at the Carrier's facility located at North White Plains, New York.

Following a trial that was held on April 12, 1982 the Claimant was dismissed from service for violating Rules E and L of the Rules of the Transportation Department, inasmuch as on March 17, 1982 he was observed transferring without authorization, 15.2 gallons of gasoline from the Carrier's gas pump to his personal vehicle and attempted to remove the gasoline from the Carrier's railroad facility.

At the outset of the trial the Claimant's representative requested a postponement until such time as a "civil action" against the Claimant would be concluded which he indicated, was the following day (April 13, 1982). The Board cannot conclude that the decision by the Conducting Officer to go forward with the trial was unreasonable or arbitrary. Civil or criminal proceedings are extraneous to the Agreement between the parties and do not limit its provisions. The Carrier is under no contractual obligation to postpone disciplinary proceedings against an employee because of legal proceedings of a civil or criminal nature. See, for example, First Division Award No. 20808.

The trial which was originally scheduled to be held on March 29, 1982 had been postponed at the request of the Claimant. In letters dated March 26 and 30, 1982, the Carrier notified the Claimant that the hearing was rescheduled for April 12, 1982. No request was made by the Claimant before April 12, 1982 to postpone the trial. Indeed it was at the trial itself, that the request to postpone the trial again was made by a duly accredited representative of the Organization. By failing to appear at the trial, the Claimant acts at his peril.

Evidence adduced at the trial "supports a finding that the Claimant committed the offenses with which he was charged. Accordingly, he violated Rule E by committing "unauthorized activity on duty or on Company property"; furthermore, he also violated Rule L by "deliberately misusing Company property" and attempting to remove Company property.

When the serious nature of the offenses which the Claimant committed on March 17, 1982 is considered with his past discipline record (3 offenses since July 1979 resulting in 5 days to 35 days disciplinary suspension), the Board concludes that the penalty of dismissal should not be disturbed.

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 20th day of February 1985.