

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Burlington Northern Railroad Co.

Statement of Claim:

1. That in violation of the current Agreement, Communications Crew Lineman D. G. Sydow was unjustly dismissed from the service of the Burlington Northern Railroad Company following an investigation held March 29, 1983.
2. That in violation of the current Agreement, the Burlington Northern Railroad Company prejudged Crew Lineman D. G. Sydow both prior to and at the beginning of the March 29, 1983 investigation. The subject investigation, therefore, was not fair and impartial.
3. That accordingly, the Burlington Northern Railroad Company be ordered to make the aforementioned D. G. Sydow whole by restoring him to its service with seniority rights unimpaired, compensating or restoring to him any and all rights or benefits he is entitled to under agreement and law and compensating him for all lost wages. Claim begins April 7, 1983 and includes removal of all record of this investigation from Crew Lineman D. G. Sydow's personal 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.

Claimant, D. G. Sydow was employed as a communication crew lineman headquartered at Willmar, Minnesota. Claimant had entered Carrier's service on April 5, 1970. On March 17, 1983 he was charged as follows:

Please arrange to attend an investigation...on Tuesday, March 29, 1983, for the purpose of ascertaining the facts and determining responsibility for your unauthorized absence from duty on Friday, March 11, 1983, and continued absence from duty until 10:45 a.m. on Sunday, March 13, 1983, while the crew to which you are assigned was involved in emergency pole line repairs West of Fargo, N.D.

The Organization's initial claim of error is that Claimant did not receive a fair and impartial hearing as evidenced by the above-quoted notice of charge, and the Hearing Officer's opening statement in violation of Rule 30. As this Board has stated before, the mere failure to insert the word "alleged" in the notice of charge before the substantive offense (in this case "unauthorized absence") is not sufficient to render the charge invalid. Second Division Awards No. 7941, 7939. The notice has sufficient allegations in ordinary and concise language of the offense charged, and contains no defect which would tend to prejudice any substantial right of the Claimant upon trial of the merits of the charge. The fact that the Hearing Officer repeated the same charge verbatim at the commencement of the hearing is similarly non-prejudicial to Claimant.

The Organization further maintains the position that Claimant's actions were in accord with the notice requirement of Rule 16, and therefore, he was discriminated against when he was unavoidably kept from work by the Internal Revenue Service appointment. It is undisputed that Claimant notified his Foreman well in advance that he had a tax audit scheduled with the Internal Revenue Service on March 11, 1983. Claimant was never given permission to absent himself from duty on that date. On March 6 1983, a severe sleet storm caused extensive damage to the Carrier's pole lines and facilities near Fargo, North Dakota. The Carrier determined that emergency repair conditions existed. Claimant was notified at 8:00 a.m. on March 7, 1983 that he was to work in the Fargo area, and he acknowledged at the hearing that it was taken for granted that the crew would work in the Fargo region until the work there was completed. The crew's work in the Fargo region continued at least through March 13, 1983.

When asked whether he had permission to be absent on March 11, 1983, Claimant testified as follows:

"There was a statement made on Monday morning asking me if I was refusing to work - I said, no - but I am going to keep my appointment, that is all that was said. He [the communications crew foreman] made the reply, I wish you wouldn't do this."

Later in the investigation, Claimant stated in reference to his absence:

"No, I did not have permission not to be there but I didn't have a stated fact saying you be here or else, either."

Despite his Foreman's request that Claimant attempt to change his appointment on March 11 with the Internal Revenue Service, Claimant made no effort to request a postponement despite the emergency nature of the crew assignment. Under such circumstances, we do not find that the Carrier arbitrarily withheld approval of Claimant's request for leave of absence from duty in violation of Rule 15(b). The finding of the Hearing Officer that Claimant violated Safety Rules 570 and 576 by his unauthorized absence from duty on March 11, 12 and 13 at Fargo, North Dakota is supported by sufficient, credible evidence in the record.

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Award No. 10381
Docket No. 10555
2-BN-EW-'85

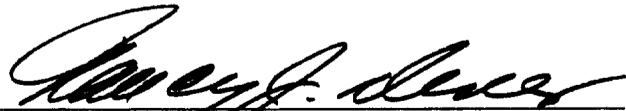
The Organization's final contention is that the dismissal of Claimant from the Carrier's service was excessive. In this case, this Board cannot sustain the Claimant's position both as to his defense of the charges, or to the punishment administered by the Carrier. Claimant's prior record reflects a five (5) day suspension in 1977 for speeding and transportation of unauthorized persons, and a dismissal on January 4, 1979 for improper, personal use of a Carrier vehicle which was involved in an accident. Claimant was reinstated to Carrier's service on September 5, 1979. This Board finds that the penalty of dismissal was neither arbitrary, capricious nor unreasonable.

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 17th day of April 1985.