

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company denied Electrician D. D. Collie the provisions of Rule 32 (a) of the June 1, 1960 controlling agreement when the Carrier arbitrarily disciplined and dismissed Mr. Collie without first affording him a fair and impartial investigation on April 3, 1984.

2. That accordingly, the Carrier be ordered to immediately restore Mr. Collie's name to the electricians' seniority roster compensating him eight (8) hours pay at the straight time rate - five (5) days a week commencing April 3, 1984 and continuous until the matter is corrected with all benefits intact.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 involved in this dispute is an Electrician who entered the service of the Missouri Pacific Railroad on March 24, 1971. He went into the Electricians' Apprenticeship Training Program and later was granted an Electrician's seniority date of April 1, 1973. Claimant apparently had a continuous employment relationship until September 15, 1983 at which time he was furloughed in a reduction in force. He was called back to a permanent position as an Electrician on November 1, 1983.

Rule 16 of the Controlling Agreement reads in pertinent part:

"Rule 16(a) When the requirements of the service will permit, employees on request, will be granted leave of absence for a limited time, not to exceed thirty days, with privilege of renewal.

(b) An employee absent on leave who engages in other employment will lose his seniority, unless special provisions have been made therefor by the proper official and committee representing his craft."

Under the provisions of this Rule Claimant did apply for and was granted a thirty day leave of absence. With the consent of the Carrier this leave was periodically extended until the end of March, 1984, at which time the Carrier would grant no more extensions and instructed Claimant to return to work on April 1, 1984. Claimant did not return to work and on date of April 3, 1984, Carrier advised the Claimant that his name was being removed from the Electricians' Seniority Roster. Carrier also alleged that Claimant had been gainfully employed by another Company which would be in violation of paragraph (b) of Rule 16.

Rule 32(a) reads as follows:

"Rule 32(a) An employee covered by this agreement who has been in the service more than 30 days, or whose application has been formally approved, shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad. He may however in proper cases be held out of service pending such investigation which shall be promptly held."

The Employees contend that under the provisions of this Rule the Claimant was entitled to an investigation before being dismissed. The Carrier contends that he was not dismissed; instead he forfeited his seniority by taking other employment while on leave of absence and accordingly was not entitled to an investigation.

In considering these contentions we note that Carrier has submitted no proof whatsoever that Claimant had taken other employment, on the other hand the Organization has submitted no proof that he had not taken other employment. It is difficult to believe that Claimant would want so many extensions to a leave of absence if he was unemployed. If Claimant has taken other employment without approval by the Carrier he would be in violation of Rule 16, paragraph (b). However, taking his seniority away from him as was done in this case deprived him of any further chance to work for the Carrier and was in fact dismissal. He was accordingly entitled to an investigation under the provisions of Rule 32, paragraph (a).

Award No. 11049
Docket No. 11000
2-MP-EW-'86

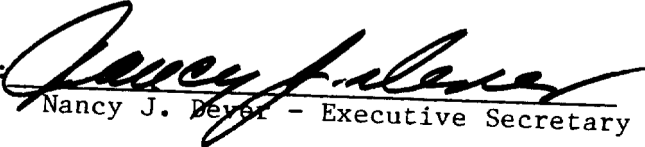
In view of all this we must rule that Claimant's name must be returned to the Seniority Roster and he must be given another chance to return to work. We cannot award him any money as he was not working for the Carrier by his own choice.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.