

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. In accordance with Rule 7-A-1, I hereby appeal the decision of Mr. V. G. Lord, Manager Selkirk Diesel, to access discipline of 30 day's suspension as result of a trial held on March 8, 1985. Letter of discipline dated March 29, 1985. Discipline imposed on Mr. Alex Catello.

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 dispute herein, Claimant was employed by the Carrier as an Electrician at Carrier's Selkirk Diesel Terminal, Selkirk, New York. On February 4, 1985, he was notified to attend a Trial scheduled to begin at 9:00 A.M., February 15, 1985, on the following:

"To develop the facts and determine your responsibility, if any, in connection with your alleged improper workmanship on Conrail Unit 3345, which was shopped at the Selkirk Diesel Terminal for the period of December 24, 1984 thru December 29, 1984, at which time it received a semi-annual inspection and a PM 7. In checking with the PM work sheets, it was revealed that you signed for item 4162, Check traction motor and rebrush as required and repair all noted defects and properly clean. This unit subsequently failed on January 26, 1985 where it was shopped at Oak Island for inspection and repair. The unit subsequently went from Oak Island

to Enola, where it was determined that the #1 traction motor failed due to short brushes, making it necessary to renew the #1 traction motor. This incident caused Conrail a large amount of unnecessary expense as a result of repairs made to this unit."

The notice of February 4, 1985, was sent Certified mail to Claimant's address of record.

At the request of Organization Representatives, the Trial scheduled for February 15, 1985, was rescheduled to March 8, 1985, and Claimant was so notified by Certified mail sent to his address of record. The record shows that the Postal Service attempted on three dates, February 16, February 21 and March 3, 1985, to deliver the letter of February 15, 1985, to Claimant, but without success. The letter was subsequently returned to the Carrier as unclaimed.

The Claimant did not appear at the rescheduled Hearing on March 8, 1985. Two Representatives of the Organization did appear. They objected to the Hearing being held in Claimant's absence, and requested a further postponement. The Conducting Officer pointed out the prior postponement from February 15, 1985, to March 8, 1985, the three attempts made by the Postal Service to notify the Claimant of the rescheduled Hearing, and proceeded with the Trial.

We find that the Carrier made every reasonable effort to notify Claimant of the rescheduling of the Trial to March 8, 1985. In recent Award 11127 we cited Second Division Award No. 8694, in which it was held:

"...the carrier is not the guarantor that the Claimant will receive actual notice. Sending a notice by certified mail to claimant's residence is reasonable. Furthermore, if the claimant had been more diligent in retrieving his mail from the post office, he would have known about the investigation. He is estopped from blaming the carrier for his own dilatory conduct."

Claimant's failure to appear at the rescheduled Hearing on March 8, 1985, or to request postponement in advance of the rescheduled Hearing date, was at his peril (Second Division Award 8225). Many Awards of the National Railroad Adjustment Board have upheld the conducting of disciplinary hearings or investigations "in absentia." (Second Division Award 11127 and others cited therein.) Railroad disciplinary proceedings are not court proceedings. Strict rules of evidence do not apply, nor is the burden of proof the same as in court cases (Third Division Award No. 25907).

The Board has carefully reviewed the Transcript of the Trial conducted on March 8, 1985, and the correspondence covering the appeal of the dispute on the property. We find no proper basis for the Board to interfere with the discipline imposed.

Form 1
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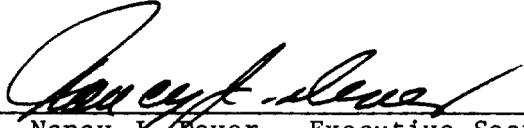
Award No. 11236
Docket No. 11279
2-CRC-EW-'87

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 1st day of April 1987.