

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company is violative of Rule 28 of the August 1, 1977 controlling agreement and has unjustly dealt with and damaged Mr. R. J. Reilly at North Little Rock, Arkansas when they did not afford him a fair and impartial investigation and assessed him discipline of dismissal on July 10, 1986.

2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Mr. R. J. Reilly subsequent to his dismissal on July 10, 1986 as follows: (a) Compensate for all time lost; (b) Return to service with seniority rights unimpaired; (c) Made whole for all vacation rights; (d) Made whole for all health and welfare and insurance benefits; (e) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance; (f) Made whole for any other benefits he would have earned during the time withheld from service; (g) In addition to the money amount claimed herein, the Carrier shall pay Claimant an additional amount of 6% annum compounded annually on the anniversary date of the claim, and, further any record of this disciplinary action be removed from his personal record and file.

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.

At the time of the incidents giving rise to the dismissal under review here Claimant was employed as a Communications Maintainer by Carrier at North Little Rock, Arkansas. He had been in service of Carrier for nearly seven years. Apparently his prior disciplinary record was unremarkable because it is not mentioned by either party any place in this record.

On June 10, 1986, Claimant was instructed to report for an Investigation on two charges that he was absent from his assigned duties between 6:00AM and 7:00AM on May 30, 1986, and between 6:35AM and 7:00AM on June 4, 1986, and on one charge of conduct unbecoming an employee in connection with his arrest on Carrier property at 6:35AM on June 4, 1986, on warrants in connection with checking irregularities. At the Investigation on these charges it was developed that Claimant's assigned work day was between 11:00PM and 7:00AM and that he was indeed absent during the two periods noted in the charges and that he was arrested on Company property on check warrants.

The Investigation further developed that Claimant's first absence was the result of becoming sick from food that he had eaten several hours earlier. Claimant, and at least two other individuals, attended a little league ball game the night before. All three ate chili dogs that evening and became quite ill early the following morning. Shortly before 6:00AM Claimant vomited on his clothes and the side of his company vehicle. He drove to his home to change and while there continued to be sick for the next several hours. At about 10:00AM, when he returned his vehicle to the shop, it had to be cleaned of his vomit.

The second absence resulted from Claimant's arrest. One of Carrier's Special Agents learned that one of the local police departments had in their files several old warrants, issued in August, September and December, 1985, for various checking account irregularities. This Agent called the police department and asked if the outstanding warrants were still valid and active. When told that they were he advised the warrant officer that Claimant would be working the 11:00PM to 7:00AM shift the next day and made an appointment to meet him at the police station at 6:15PM June 4. The meeting occurred as scheduled and both went to Carrier's radio shop where the warrants were served.

At the time Claimant protested his arrest, contending that the warrants were not valid, having been included in a personal bankruptcy matter which was pending and that he was making payments to the court on checks he had written. He also asked the arresting officer to wait until 7:00 AM, his scheduled quitting time, to take him down to make bond, which the officer refused to do.

Thus, while the unembellished facts demonstrate that Claimant was indeed absent from the job site during his assigned working hours on two occasions and was in fact arrested on Carrier property, the evidence in mitigation positively indicates that one of the absences was due to a violent illness and the other absence, with the arrest, was the result of particular arrangements developed by a Carrier Special Agent concerning dated warrants connected with Claimant's personal finances.

Rule 28 of the Agreement provides that an employee "...shall not be disciplined or dismissed without first being given a fair and impartial investigation...." Fairness and impartiality contemplate that mitigating circumstances be weighed in the investigation, especially when the level of discipline is being determined. This does not seem to have occurred here, for the notice assessing discipline of dismissal merely stated that the investigation sustained the charges, accordingly, dismissal is in order. No mention is made that the penalty assessed was based in part on the seriousness of the offense or Claimant's past discipline record, if he had one.

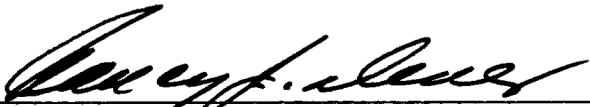
We find this to be arbitrary and a denial of a fair and impartial investigation as provided by the Rule. The discipline of dismissal is grossly excessive. It is our judgment that if the circumstances of this matter warranted any discipline the most that could be supported would be a thirty calendar day suspension. Accordingly, we will modify the discipline assessed to a thirty calendar day suspension and Claimant shall be returned to service promptly and paid for wage losses sustained during the time out of service, less deductions for outside earnings, as provided by Rule 28(d). Interest will not be allowed.

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 31st day of August 1988.