

The Second Division consisted of the regular members and in addition Referee Donald E. Prover 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 32 of the June 1, 1960 controlling agreement and has dealt unjustly with and damaged Electrician M. C. LeClair at DeSoto, Missouri when they did not afford him a fair and impartial investigation and assessed discipline of Dismissal by letter dated February 2, 1990.

2. That the Missouri Pacific Railroad Company is violative of Rule 31 (a) of the June 1, 1960 controlling agreement when they failed to timely respond within the required 60 days to the initial claim filed March 27, 1990, and further violated Rule 31 (a) when they did not allow the claim as presented as prescribed in said rule.

3. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician M. C. LeClair commencing with the date of Dismissal February 2, 1990, as follows:

- (a) reinstate him to service with seniority rights unimpaired;
- (b) for all wage losses suffered by Mr. LeClair;
- (c) made whole for all vacation rights;
- (d) made whole for all health and welfare and insurance benefits;
- (e) made whole for all 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 amounts claimed herein, the Carrier shall pay Mr. LeClair an additional amount of 6% per 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.

In November 1988, Claimant was transferred from Omaha, Nebraska, to the shop facility at De Soto, Missouri. Claimant reported to the De Soto shop on December 23, 1988, and advised the Manager of Car Maintenance that he intended to work only one day. Claimant departed Carrier's premises and never again reported to De Soto to protect his assignment.

In February 1989, an Investigation was held charging Claimant with being absent without proper authority from December 24, 1988, through January 11, 1989. The Claimant did not attend the Investigation. Following the Investigation the Claimant was notified under date of February 8, 1989, that his record was assessed with a thirty (30) day deferred suspension. He was also notified to report to the office of Director-System Shop within 14 days. He did not report within the 14-day period and was notified on February 22, 1989, that he was dismissed from service. Under date of April 25, 1989, the Carrier notified the Claimant (copy to Organization Representatives) that because of procedural defects the suspension and dismissal would be removed from his record. He also was notified to report to the office of Director-System Shop within 14 days. The April 25, 1989 letter was sent by Certified Mail, Return Receipt Requested. This letter was never claimed by the Claimant. Another Investigation was scheduled for June 27, 1989, but was cancelled on August 15, 1989, when the Claimant's Local Chairman advised the Carrier she had information from a Carrier Personnel Officer that Claimant had resigned on February 15, 1989. Under date of October 31, 1989, the General Chairman advised the Carrier that an error had been made by Carrier's Personnel Department and that in fact the Claimant had not resigned.

The General Chairman attached a letter dated October 20, 1989, signed by Claimant wherein he stated that he had not signed a letter of resignation and had no intention to sign any such letter. However, the Claimant did not report for duty or contact any Carrier officials subsequent to October 20, 1989.

Subsequently under date of December 21, 1989, the Claimant was notified to attend an Investigation on January 24, 1990. He was charged with allegedly failing to comply with instructions dated April 25, 1989, and that he had absented himself from assigned duties since May 12, 1989, and continuing. Following the Investigation the Claimant was notified under date of February 2, 1990, that he was dismissed from service.

The Organization argues that the Claimant did not receive a fair and impartial Investigation. We have reviewed the Investigation testimony and find that the Claimant did receive a fair and impartial Investigation. The Hearing Officer conducted the Investigation in an objective manner and the Claimant and his Representative were given every opportunity to question witnesses and to present evidence in Claimant's behalf.

The Organization also argues that Carrier violated Rule 31, relating to Time Limits, in the handling of the initial appeal. Rule 31 provides for notification within 60 days from the date same (claim) is filed. The letter in question was dated March 27, 1990, and was received by the Carrier on April 2, 1990. The denial was made by the Carrier on May 29, 1990. We consider that under the Rule the date on which the Carrier actually receives the Claim to be the date the Claim is filed. Accordingly the Carrier did not violate Rule 31 because its denial was made within 57 days of April 2, 1990.

The Organization contends that the last correspondence received by the Claimant was the letter dated February 22, 1989, advising him of his dismissal. Further, that Claimant was totally unknowing of Carrier's removal of the suspension and dismissal and instructions to return to work as given in Carrier's April 25, 1989 letter because Claimant did not receive the letter. The April 25, 1989 letter was sent to Claimant's address but was returned unclaimed. A copy of the April 25, 1989 letter was given to the General Chairman and the Local Chairman. The April 25, 1989 letter was the result of an appeal of Claimant's February 22, 1989 dismissal made by the Local Chairman in a letter dated April 3, 1989. The Local Chairman was also advised under date of August 15, 1989, of the cancellation of another Claimant Investigation scheduled for June 27, 1989. Under date of October 31, 1989, the General Chairman in a letter to the Carrier attached a copy of the Claimant's October 20, 1989 letter wherein he stated he had not signed a letter of resignation. The following paragraph appears in the October 31, 1989 letter:

"As you are aware, the dismissal of Mr. LeClair (which was actually February 22, 1989) was overturned in your letter of April 25, 1989 and accepted in the Local Chairman's letter of June 19, 1989. Furthermore, your letter to Mr. LeClair dated April 25, 1989 did remove the dismissal as well as a 30-day deferred suspension from his record."

A copy of the October 31, 1989 letter was sent to the Claimant. In the light of the Organization's activities in this case it is difficult for this Board to believe that between April 25, 1989, and October 20, 1989, the Claimant did not receive any correspondence from or have any discussions with his Representatives as to his status, especially in view of the fact they were handling grievances on his behalf.

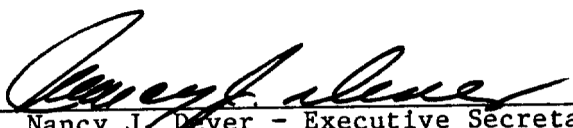
It is our conclusion, based on testimony given at the Investigation and correspondence between the Carrier and the Organization, that the Claimant must have been aware prior to October 20, 1989, that his status had changed on April 25, 1989, and that he no longer was considered to be in a "dismissed" status. The Claimant did not, in our opinion, have a satisfactory explanation or excuse for being absent from his assigned duties from May 12, 1989, through January 24, 1990. The Carrier having met the burden of proof in this instance, there is no basis for disturbing the discipline assessed in this case.

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 10th day of June 1992.