

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12624
Docket No. 12548
93-2-92-2-97

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement District Lineman Donald J. LaFavor was dismissed from service by the Burlington Northern Railroad Company following an unfair investigation held on March 4, 1991 in Spokane, Washington.
- 2. That the investigation held on March 4, 1991 was not a fair and impartial investigation as required by the rules of the controlling Agreement, and that discipline assessed was unjust and unwarranted.
- 3. That accordingly, the Burlington Northern Railroad Company should be directed to reinstate District Lineman Donald J. LaFavor to service and make him whole for all wages, benefits, rights and privileges of which he has been deprived and, in addition, the entry of investigation and discipline should be removed from his 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 employe 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 were given due notice of hearing thereon.

On February 26, 1991, the Carrier served the following notice by certified mail on the Claimant to attend an investigation:

"Attend investigation in the conference room, Burlington Northern yard office, East 4510 Wisconsin Avenue, Spokane, Washington at 10:00 AM, March 4, 1991, for the purpose of ascertaining the facts and determining your responsibility in connection your alleged failure to comply with instructions from proper authority, alleged insubordination of refusal to submit proper documentation of injury, when you were ordered to do so on February 13, 1991, by your immediate supervisor.

Arrange for representative and/or witnesses, if desired, in accordance with governing provisions of prevailing schedule rules."

The investigation was held as scheduled although the Claimant was not in attendance. The Carrier's Supervisor, who sent the notice of investigation, testified that the investigation notice letter was sent to a post office box because the Claimant refused to provide his home address and his home telephone number. While the Board prefers to review an investigation which includes the presence and the testimony of the person most effected, there are situations where the Carrier may rightfully conduct an investigation in absentia. We find such a situation in this case.

The record shows that the Carrier made three attempts to deliver the notice of investigation. The Claimant had well over two weeks to pick up the notice. He did not provide a home phone number. Given these circumstances, we find that proper notice was constructively given to the Claimant. The Claimant has no one to blame but himself for not receiving the notice of investigation.

With respect to the merits of the claim, the evidence shows that the Claimant had laid off work. On February 13, 1991, during a telephone conversation with his Supervisor, the Claimant advised his Supervisor that he was being withheld from service by his physician because of medical problems with his elbows. The Claimant refused to fill out the Carrier's accident forms, even after the Supervisor offered to deliver the forms to his residence. Subsequently, on April 26, 1991, after he had been dismissed, the Claimant filed the necessary injury report, in which he claimed that an elbow injury was sustained on November 28, 1990.

There are a number of issues to this particular claim which we have carefully reviewed and considered. However, we find it unnecessary to comment upon these issues because they are not determinative of the dispute. Nonetheless, a comment is appropriate with respect to the Claimant's letter of May 10, 1991. While we note that the Board may not properly consider the issues and questions brought forth in his letter because the record was closed after the hearing, we conclude, arguendo, that even if the Claimant's contentions are accepted, he still clearly failed to comply with the same rather basic requirements of which he was well-aware. Specifically, the requirement to fill out an injury report on November 28, 1990 and to comply with his Supervisor's reasonable orders. He failed to do both.

In view of all of the foregoing, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 1st day of December 1993.