

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12690
Docket No. 12633
94-2-92-2-155

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM:

"Appeal of dismissal from service of Electrician F.L. Morrison by the Consolidated Rail Corporation on November 18, 1991, at Oak Island Diesel Terminal, Newark, New Jersey."

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 waived right of appearance at hearing thereon.

At the time of the occurrence giving rise to the dispute herein, Claimant was employed as an Electrician at Carrier's Oak Island Diesel Terminal in Newark, New Jersey. Claimant was given a notice to report for an investigation on the following charges:

- "1. Conduct unbecoming an employee by use of vulgar and abusive language toward T. Ricco, beginning at approximately 4:55 A.M., on September 28, 1991 at the Oak Island Service Track.
2. Conduct unbecoming an employee when you physically threatened T. Ricco beginning at 4:55 A.M. September 28, 1991, at the Oak Island Service Track.
3. Conduct unbecoming an employee when you had an altercation with T. Ricco at approximately 4:55

A.M., on September 28, 1991 at the Oak Island Service Track."

The Investigation was originally scheduled for October 9, 1991, and then rescheduled for October 29, 1991, by agreement of the parties. Claimant received notice of the rescheduled investigation via certified mail on October 19, 1991, however, he did not attend the investigation, which was held in absentia. On November 18, 1991, Claimant was notified that, as a result of the Investigation, he was dismissed from the service of the Carrier.

At the outset, the Organization alleges that Carrier proceeded with the Investigation without Claimant being present over the objections of his representatives. The record, however, discloses no objection was made in the Investigation regarding the decision to proceed without Claimant and no request for further postponement was made by Claimant or his representatives. This Board has consistently held that a Claimant may choose not to attend an investigation, however, he is bound by the record established thereat. Claimant's failure to attend constitutes a waiver of the procedural rights to which he is entitled under the applicable discipline rules. Nonetheless, Carrier still bears the burden of proving its charges.

After a thorough review of the record of the investigation, we find that the Investigation was conducted in a fair and impartial manner. The Organization has strenuously challenged the credibility of the testimony of Claimant's supervisor (the other party involved in the altercation); however, it is not the function of this Board to assess the credibility of witnesses, weigh the evidence or to resolve conflicts in testimony. That is the function of the Hearing Officer. The function of the Board, as an appellate body, is to review the evidence as a whole and to determine if substantial evidence exists to support the Hearing Officer's decision (see Second Division Award 8552). The record contains substantial evidence to support Carrier's finding that Claimant was guilty of the charges. Claimant's conduct in this instance was unacceptable by any standard. The Board cannot conclude that Carrier acted in an unreasonable, arbitrary, capricious or discriminatory manner in assessing the penalty of dismissal against Claimant.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 20th day of April 1994.