

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12732
Docket No. 12540
94-2-92-2-63

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

- "1. That the Grand Trunk Railroad Co., hereafter referred to as the Carrier, violated the controlling Agreement, Rule # 31, but not limited thereto, when they unjustly removed Machinist M. L. Holsten, Battle Creek MI., from the Machinists Seniority Roster at its Battle Creek Shop.
2. That accordingly, Carrier be ordered to return Machinist M. L. Holsten, hereafter referred to as the Claimant, to the Machinists Seniority Roster with his seniority unimpaired and that he be made whole for any contractual entitlement lost as a result of the Carrier removing his name from the seniority roster."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute dates back to January 18, 1985 when Claimant was removed from service. The on-property record indicates that Public Law Board No. 4015, Award 1 concluded that Claimant should be returned to service without backpay. The Award issued in April 1986 found that while Claimant was guilty of insubordination, there was insufficient evidence to conclude that alcohol or drugs were involved.

By certified letters dated May 29, and July 15, 1986 the Carrier requested that Claimant make immediate contact with the Shop Superintendent to take a return-to-work physical. The Carrier heard from the Claimant's mother that the Claimant had entered the state hospital in July 1986. The Carrier confirmed this fact and determined through Claimant's physician that he would be released prior to September 1, 1986.

The record next reveals that on May 21, 1991 the Claimant contacted the Shop Superintendent and requested that he be permitted to return-to-work. A review indicates that the Claimant was informed that he had to provide the Carrier with medical information and a release from his physician and psychiatrist dating from February 20, 1985. Claimant did not do so. The Claimant provided only two notes dated May 29, and June 20, 1991. The Board reviewed the notes and agrees with the Carrier's position herein that they did not discuss the period requested "nor did they give a diagnosis or prognosis of your condition...."

By letter dated September 5, 1991 the Carrier notified the Claimant that inasmuch as he had failed to provide the relevant information and to respond, his name was being removed from the roster. The claim represents the Organization's allegation that the Carrier violated Rule 31 in that he was "disciplined without a fair hearing." The Carrier disputes the applicability of the Rule in that the Claimant was not disciplined.

This Board finds no support for the Organization in these circumstances. In our view the evidence indicates that the Claimant's actions resulted in his removal from service. While this dispute was on-going, the Carrier pointed out that in actuality the Claimant's name was last carried on the roster on January 1, 1985. It notes that it was in error, stating that Claimant's name was to be removed, as it never reappeared or was protested. This stands as fact in the record. The Board also finds that the Claimant never complied with the Carrier's legitimate request for medical evidence necessary to schedule a return-to-work physical. We also find that although the request was understood by the Claimant, he did nothing to make himself available. Notwithstanding the Claimant's inaction, the Carrier again offered in its October 7, 1991 letter to permit the Claimant to document his medical condition within 30 days and allow him to proceed to process his return-to-work request. The Claimant did not respond.

This claim must be denied due to the Claimant's inaction. The Claimant was given ample opportunity to be restored to service. Rule 31 is inapplicable where, as here, the Claimant abandoned his job. The Claimant waited over five years to indicate his readiness to return to work as per Public Law Board No 4015, Award 1. Thereafter, he failed to furnish the requested medical documentation. Even when given a final gratuitous opportunity to start again, he never complied.

Accordingly, we conclude that the Claimant failed to responsibly act and in doing so, abandoned his position with the Carrier. There has been no violation of the Agreement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.