

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12879
Docket No. 12804
95-2-93-2-163

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(CSX Transportation, Inc. (formerly
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

- "(1) That at Jacksonville, Florida, effective close of work on June 5, 1992, CSXT violated the controlling agreement and particularly Rule 35 resulting from formal investigation held May 28, 1992 disallowing the Organization's request for postponement of investigation with Communications Maintainer L. A. McKinley, ID #320447, therefore denying Mr. McKinley a fair and impartial investigation alleging failure to protect assignment on April 3, 1992 (sic) and reported to work 3 1/2 hours late and April 12-14, 1992 failure to report for scheduled shift, nor was supervisor so notified and CSXT assessing discipline by unjustly dismissing Mr. McKinley from service of CSXT effective close of work June 5, 1992.
- (2) That Communications Maintainer L. A. McKinley be compensated for eight (8) hours at the pro rata rate commencing June 6, 1992 by reason of CSXT unjustly dismissing Mr. L. A. McKinley from service and compensation for all wage lost until such time Mr. McKinley is returned to service with seniority rights unimpaired, be made whole for all vacation rights, for all health and welfare and insurance, for pension benefits, including Railroad Retirement and Unemployment Insurance, and for any other benefits that he would have earned as said benefits are part of wages lost while being unjustly dismissed."

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.

Claimant was charged with:

"... failure to protect your assignment on April 8th, when you reported to work 3 1/2 hours late, and April 12th-14th when you did not report for your scheduled shift, nor was your supervisor notified."

The Investigation was initially set for April 28, 1992, but was postponed at the request of the Organization until May 28, 1992. Claimant did not appear and the Investigation was held in absentia. The charges were never refuted. Claimant was found culpable and was dismissed from Carrier's service.

The Organization argued Claimant did not receive a fair and impartial Hearing for two reasons:

- "(1) He was not present and a request for postponement was denied.
- (2) Carrier failed to afford Claimant a precise charge in that no rule was cited as having been violated."

Claimant's absence was at his own volition. Carrier's denial of an indefinite extension until either treatment for alcoholism was completed or until the Organization was able to communicate with him was reasonable.

No proof was offered that Claimant was in a program and furthermore, even if he was, he could communicate.

As stated in Award 10 of Public Law Board No. 4162:

"Carrier simply cannot be expected to continually postpone hearings for the unexcused failure of Claimant to appear."

Carrier's determination to hold the Investigation in absentia cannot be faulted. Claimant had the right to attend or at least impart to his representatives a reason why another postponement was necessary.

Regarding the Organization's argument of lack of a precise charge because Carrier did not cite a Rule in the Notice of Charges, the Board notes that the Discipline Rule does not so provide. The charges were clear.

The dismissal of Claimant is upheld.

AWARD

Claim denied.

O R D E R

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 17th day of April 1995.