

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12919
Docket No. 12805
95-2-93-2-7

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers, AFL-CIO System Council No. 2
(
(Union Pacific Railroad Company
((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 unjustly dealt with and damaged Electrician S. E. Jacob at North Little Rock, Arkansas, when they denied him a fair and impartial investigation, resulting in the unjust and improper discipline of Letter of Reprimand placed in his personal record file on January 20, 1992.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to remove from Electrician S. E. Jacob's personal record file all reference to this discipline matter, clearing the fifteen (15) days deferred suspension assessed on January 20, 1992 and he (Mr. Jacob) be removed from Step 3 of the Progressive Counseling and Discipline Procedures."

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 employed by Carrier in its North Little Rock, Arkansas, diesel facility as an electrician. He failed to report for work on October 21 and 23, 1991. He also failed to notify or obtain permission to be absent from his supervisors.

Carrier issued Notice of Investigation to Claimant dated November 25, 1991, reading in part:

"Arrange to report to the office of the Shop Director, 8th and Pike Avenue, North Little Rock, AR on Wednesday, December 11 1991, at 9:00 A.M., for formal investigation to develop the facts and place your responsibility, if any, in connection with alleged charges you were absent without authority Monday, October 21, 1991 and Wednesday October 23, 1991.

The investigation and hearing will be conducted in conformity with Rule 32 of the Controlling Agreement, effective June 1, 1960, between the Company and the International Brotherhood of Electrical Workers.

You are entitled to representation as provided for in the above stated agreement, any (sic) you may produce such witnesses as you may desire at your own expense."

The Investigation was rescheduled and held on December 16, 1991. On January 20, 1992, Carrier issued Notice to Claimant, stating "... the transcript of the investigation determined the charge you were absent without authority Monday, October 21, 1991 and Wednesday, October 23, 1991 was substantiated.", and assessed discipline of fifteen (15) days deferred suspension. Carrier also placed him in Step 3 of its Progressive Counseling and Discipline Procedure.

The Organization filed timely appeal and handled same to a conclusion on the property is accordance with the terms of the Agreement without receiving satisfactory resolution. Accordingly, it has appealed its claim to this Board for resolution.

The appeal to this Board was made on the grounds that Carrier violated Rule 32 of the controlling Agreement in that it did not issue a precise charge in its Notice of Investigation and afford Claimant a fair and impartial Investigation.

The transcript of Investigation reveals that Claimant was granted his Agreement due process rights. He was apprised of the charge approximately 15 days in advance of the date of Investigation; advised of the right to bring in witnesses; and to be present at the Investigation with representatives of his choice. Claimant was present with 2 representatives, and all participated in the Investigation, presented witnesses, asked questions and cross-examined Carrier witnesses.

The Organization also argues that a prejudicial error was committed when the Hearing Officer, following the Investigation, found Claimant guilty and assessed discipline.

This Board finds no merit to its prejudicial argument. The Hearing Officer was best suited to make credibility findings and assess discipline. In our judicial system, Judges conduct trials and pronounce judgement every day. If the defendant is not happy with the judgement, he can appeal to the Appeals Court. In the railroad industry, if the Claimant is unhappy, he may appeal his case to the next higher officer and receive independent review based on the transcript of the Investigation. See Second Division Awards 5360 and 5855.

The transcript of the Investigation reveals that Carrier not only adduced substantial evidence to support its charges, but that the Claimant acknowledged that he absented himself from his assignment without authority on October 21 and 23, 1991.

This Board finds no justifiable cause to interfere with the discipline assessed by the carrier.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.