

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13086
Docket No. 12975
96-2-94-2-133

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(CSX Transportation, Inc. (former
(Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That, in violation of the current agreement, CSXT (former Baltimore & Ohio Railroad Company) arbitrarily and unjustly removed Machinist S. L. Mathias' name from the Queensgate Locomotive Facility. His name was removed effective October 12, 1993.
2. That, accordingly, CSXT be ordered to reinstate Machinist Mathias' name to 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 were given due notice of hearing thereon.

On October 12, 1993, Claimant was notified by letter that he had been dropped from Carrier's service pursuant to Rule 19 of the current working Agreement. Rule 19 reads in pertinent part as follows:

"Absence from Work.

In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible either by telephone, messenger, or United States mail. Employees absenting themselves for fifteen (15) days without notifying Management shall be considered as out of service and dropped from rolls and seniority roster."

Repeated attempts to notify Claimant of his removal from the seniority roster were unsuccessful. Letters sent by Carrier to his most recent address were returned unclaimed. Nor was the Organization initially successful in contacting him. Over the objection of the Organization, a Hearing was held on August 17, 1993, following which the Carrier confirmed its decision to remove Claimant from the seniority roster. Carrier did not attempt to report the outcome of the Investigation to Claimant or the Organization until October 12, 1993.

The Organization filed a claim protesting the Carrier's decision on December 1, 1993. Carrier did not respond to that initial letter, and the Organization restated its appeal by letter of January 18, 1994. Ultimately, the Organization was able to make contact with Claimant on February 1, 1994. In response to that letter, Claimant submitted a statement and doctor's receipt. In his statement, Claimant maintained that he had notified the Carrier's agent on duty on July 9, 1993, that he was marking off sick on account of stress-related illness. The doctor's receipt confirmed that Claimant had been under a doctor's care for "anxiety." Based upon Claimant's correspondence, the Organization continued to pursue its claim on his behalf. That claim was denied and subsequently progressed in the usual manner.

It is not clear on the record before this Board why Carrier waited until two months after the Hearing to notify the Organization of the results of that Hearing. Nor is it clear on the record why the Organization was unable to contact Claimant for three months after that. It is clear that Claimant was being treated for stress-related illness during the period in question, and there is no evidence on the record to refute his attestation that he marked off sick with Carrier's agent in a timely fashion -- on July 9, 1993.

Carrier maintains that Rule 19 is "self-executing" and, therefore, it was within its rights to remove Claimant from the seniority roster. In view of the Claimant's unrefuted testimony that he marked off sick, and the physician's receipt placed on the record, however, he should not have been removed from the roster. Notwithstanding the foregoing, Claimant shares some culpability for his plight, since he failed to keep Carrier properly apprised of his current address. Accordingly, the Board finds that in view of the peculiar circumstances of this case, Claimant shall be reinstated to the Seniority Roster, but without compensation for time lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.