

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13785

Docket No. 13684

03-2-03-2-2

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

**(Sheet Metal Workers' International Association
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

"1. That the Carrier violated, but not limited to, the Agreement between the Union Pacific Railroad Company and the employees represented by the Sheet Metal Workers International Association, effective January 1, 1993, when they unjustly withheld Sheet Metal Worker Mr. Tony B. Torres of North Platte, Nebraska from the service of the Union Pacific Railroad on February 15, 2002, and unjustly dismissed him from service on July 30, 2002, after investigation held on Tuesday, July 9, 2002 for alleged violation of Rule 1.6, Conduct-paragraphs: 1-"Careless of the safety of themselves or others",4-"Dishonest".6-"Quarrelsome" and Rule 1.13 Reporting and Complying with Instructions of Rule PB-20397, "Maintenance Operations (Mechanical)". Said termination was unjust and arbitrary for the following reasons:

- That the Carrier failed to give the claimant a precise charge in the February 15, 2002 investigation notice.**
- That the Carrier deprived the claimant of a fair and impartial investigation hearing.**
- That the Carrier failed to sustain their burden of proof that the claimant violated carrier rules that were cited in the February 15, 2002 hearing notice.**
- The punishment of termination in this case is excessive.**

2. That the Carrier reinstate Sheet Metal Worker Mr. Tony B. Torres to service and compensate and adjust him as follows:

- All seniority rights restored whole and unimpaired.
- Compensation for all time lost, straight time and overtime, from February 15, 2002 continuous until Mr. Torres is reinstated to service plus 9% interest.
- All vacation rights restored whole and unimpaired.
- Compensation for all health, dental, life and disability insurance premiums.
- Entire incident is removed from personal record."

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.

By correspondence dated February 15, 2002 the Claimant was notified to attend a formal Investigation on February 25, 2002:

"to develop the facts and place your responsibility, if any, wherein after reporting a personal injury on January 21, 2002, at approximately 15:50 to your supervisor, you allegedly become quarrelsome and argumentative with both managers and emergency room personnel and you are possibly dishonest: in that the information that you gave to Senior Manager, Dan Base describing

how the injury occurred, was different from what you told the emergency room doctor/personnel. Lastly, your actions may demonstrate a careless attitude towards your own personal safety in that you possibly re-injured yourself after being back to work for only one week after providing a full medical release to the Union Pacific Railroad.

These allegations could be in possible violation of Rule 1.6, Conduct-Paragraphs: 1 - 'Careless of the safety of themselves or others,' 4 - 'Dishonest,' 6 - 'Quarrelsome' and Rule 1.13 Reporting and Complying with instructions of Rule Book PB-20397, 'Maintenance Operations (Mechanical),' resulting in the assessment of UPGRADE Level 5 discipline - permanent dismissal."

The Organization on February 20, 2002 requested a postponement which was granted. The Hearing was rescheduled for March 11, 2002. The Organization, on February 22, 2002, again requested an indefinite postponement until the Claimant's health had improved. After receiving a letter from the Claimant's doctor the postponement was again granted and the Hearing was rescheduled for April 15, 2002. On April 11, 2002 the Organization again requested a postponement until the Claimant's health had improved. After receiving additional medical information the Carrier granted the request and the Hearing was rescheduled for May 13, 2002. On May 7, 2002 the Organization again requested a postponement until the Claimant's health had improved. This postponement was granted and the Hearing was rescheduled for June 17, 2002. The Carrier indicated at that time that this would be the final postponement based on the already provided medical information and that accommodations would be permitted that would allow the Hearing to be held. By letter dated May 14, 2002 the Carrier amended the charges by listing other Rules the Claimant allegedly violated. On May 20, 2002 the Organization requested another postponement as the Local Chairman was going to be on vacation. The request was granted and the Hearing was rescheduled for July 9, 2002. On July 1, 2002 the Organization again requested a postponement as the Claimant has a doctor's appointment out of town, and that the Hearing should be rescheduled when the Claimant's health had improved. This request was denied by the Carrier on July 2, 2002.

The Investigation was held on July 9, 2002. The Claimant did not attend. The Organization Representatives ably and vigorously represented the Claimant, voiced protests, and cross-examined Carrier Officials in their defense of the Claimant. Their efforts while laudatory were of no avail as by letter dated July 30, 2002 the Carrier notified the Claimant that based on the Investigation he was dismissed from service.

While Investigation was held in absentia, it was only after six postponements had been granted. Such postponements by the Carrier are indications that the Carrier was attempting to accommodate the Claimant's situation. (See Second Division Awards 13160 and 13364)

While the Organization has made several procedural objections, the record reflects that such objections are without merit. The record further reflects that the charges were precise, the Hearing was fair and impartial, and in view of the seriousness of the substantiated Rule violations the penalty of discharge was appropriate.

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 24th day of October 2003.