

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13899
Docket No. 13769
06-2-04-2-27

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

PARTIES TO DISPUTE: ((International Brotherhood of Electrical Workers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. That the Union Pacific Railroad Company violated the Controlling Agreement, particularly Rule 37, but not limited to, when Electrician Richard W. Dale was unjustly and arbitrarily dismissed from service on October 24, 2003, following the investigation held on September 23, 2003.
2. That, accordingly, the Union Pacific Railroad Company make whole Electrician Richard W. Dale as follows:
 - a. Reinstatement him to service with seniority rights unimpaired;
 - b. Compensate him for all wages lost at the prevailing rate of pay of electricians and all applicable overtime;
 - c. Make him whole for all vacation rights;
 - d. Make him whole for all health and welfare and insurance benefits;
 - e. Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;
 - f. Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;
 - g. Any record of this arbitrary and unjust disciplinary action be expunged from his 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.

The Claimant, Richard Dale was an electrician in service with the Carrier for over 33 years at the Carrier's North Little Rock, Arkansas locomotive facility. The Claimant was dismissed for allegedly being dishonest and failure to follow instructions as a result of an investigation held after two postponements on September 23 and 24, 2003.

The Organization argued that the Carrier erred when it conducted an investigation that was neither fair nor impartial. In addition, the Carrier failed to satisfy its burden of proof, all of which are in violation of Rule 37 of the Agreement. The record in this case shows that the hearing officer betrayed his obligation to insure that the Claimant received a fair and impartial investigation. It appeared that the judgement had been predetermined. Referees on this division have found that fair and impartial hearings are a critical aspect to any case and numerous citations were provided. In addition the Carrier did not allow a postponement of the hearing based on the Claimant's heavy medication and backed up by a letter from his doctor.

In addition to the above, the Carrier did not meet its burden of proof in this matter. The Claimant was charged with violations of Rule 1.13 and 1.6. It is obvious from the record that the Carrier was trying to limit its liability in this matter. The Claimant is not a medical professional. The only exposure to chemicals which would exacerbate his polyduropathy was at the workplace. The Claimant provided proof to the Carrier that indicated that he was suffering from a possible disabling condition.

The Claimant was successful in obtaining a disability annuity through the Railroad Retirement Board which included a doctor's statement that stated that the Claimant's working environment at the Union Pacific contributed to his medical condition. The fact that he was not completely aware of his diagnosis on May 30, 2003 does not prove that he was dishonest or immoral. Based on the above, the punishment of termination is excessive, and, therefore, the claim should be sustained.

The Carrier argued that the evidence in the on-property evidence proves the Claimant's dishonesty. It was the Claimant who stated on May 30, 2003 that he had a personal medical condition. On June 19, 2003 the Claimant completed a personal injury report form that attributed his illnesses to conditions association with his Railroad employment. The Claimant denied being trained on chemical hazards in the workplace. This was proven at the investigation to be untrue. The Claimant was dishonest on May 30, 2003. He plainly knew that his doctor suspected rightly or wrongly workplace exposure. Injuries must be reported at the first available time, yet the record shows that the Claimant had discussions with his doctor in mid-May 2003 and on May 30, 2003 clearly stated that this was an off-duty illness. There are numerous awards that are consistent with the Carrier's actions in this matter.

In addition there are no procedural defects sufficient to warrant overturning the disciplinary assessment. The seriousness of the Claimant's offense fully supports the discipline imposed. Therefore, the claim should be denied.

Upon complete review of the record the Board finds that the Claimant's investigation met at least the minimal standards of the applicable rule. The Claimant was given two postponements of his investigation. The investigation was originally scheduled for July 10, 2003, postponed until August 5, 2003, held on September 23, 2003, and then continued to September 24, 2003. The record shows that the Claimant had knowledge of at least the potential that the chemical exposure at the workplace could have attributed to his medical condition. He kept that fact from the Carrier for a significant period of time which is clearly a dishonest act.

AWARD

Claim denied.

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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 7th day of July 2006.