

Award No. 6314

Docket No. 6192

2-CRI&P-MA-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the controlling agreement Machinist R. E. Woodard was unjustly dismissed from the service of the Chicago, Rock Island and Pacific Railroad Company on September 14, 1970 without being given a fair hearing.

2. That, accordingly, the Carrier be ordered to compensate Machinist R. E. Woodard for each day that he has been deprived of work since September 21, 1970 until he is restored to service; that the Carrier be ordered to restore him to service; that his vacation rights, seniority rights and rights under Travelers Group Insurance Policy GA-23000 be restored in full, and in all respects make Machinist Woodard whole.

EMPLOYEES' STATEMENT OF FACTS: An investigation was scheduled for September 2, 1970 in the office of the Master Mechanic, Kansas City, Kansas with Machinist R. E. Woodard as the accused employe because he had allegedly left his assigned work area at approximately 10:15 P.M. and had taken a shower, all in violation of company Rule "Q". On September 2, 1970, Machinist Woodard did not appear at the scheduled investigation. No testimony was taken at the scheduled investigation to substantiate the charges leveled at Machinist Woodard. Although scheduled for September 2, 1970, the investigation was never completed. Machinist Woodard was dismissed from service on September 14, 1970.

Claim was filed in Machinist Woodard's behalf on November 10, 1970 and was subsequently progressed to the highest designated officer of the Carrier in accordance with the Agreement, but the Carrier has declined to make any satisfactory settlement thereof. Copies of correspondence showing handling of this case on the property are attached and identified as Employees'

The Agreement effective October 16, 1948, Reprinted to Include Interpretations and Special Agreements to July 1, 1968 is controlling.

Eventually, on October 12, 1971, as shown in the correspondence, the General Chairman notified the Carrier that no response was forthcoming from Claimant. Thus, for nearly six months, Mr. Woodard was in possession of this offer. The Claimant neither chose to accept nor reject that offer, but totally ignored both the Carrier's tenure of the same and the organization's participation therein. For all practical purposes, this employe turned his back on his contested employment, and conducted himself as an individual who had resigned from the employ of this Carrier. It seems ludicrous that this Board would consider returning a man to a job in which he has indicated no interest by his actions and complete silence. Certainly, Mr. Woodard has effectively foreclosed his right to contest his employment before this Board. The Carrier submits that the Second Division would be engaging in a futile act to request reinstatement for a man who obviously does not wish to be employed, now or in the future, by this Carrier.

The Carrier submits that the Petitioning Organization has not substantiated that Claimant Woodard was deprived of procedural rights under Rule 34. Claimant was afforded an investigation which he chose to ignore. The Carrier acted properly by closing out the Claimant's record, an action that was concurred in by his authorized representatives. Therefore, the evidence of record upholds the Carrier's action in this case, and the Board should not disturb the discipline assessed.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Our study of the evidence contained in this Docket fails to disclose any valid basis for the claim and it will be, therefore, denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.