

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: { International Association of Machinists  
and Aerospace Workers  
REA Express, Inc.

Dispute: Claim of Employees:

1. That under the controlling agreement mechanic L. P. Smerk was unjustly dismissed on October 25, 1971, effective October 22, 1971, without the benefit of an investigation.
2. That accordingly the Company be ordered to:
  - a. Restore mechanic L. P. Smerk to service with seniority unimpaired, and,
  - b. Compensate mechanic L. P. Smerk for all time he has been withheld from service, subsequent to October 22, 1971.

### 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.

The initial question to be determined in this dispute is whether claimant was afforded an investigation in conformity with the requirements of Rule 35 of the schedule agreement. The pertinent fact relative to this preliminary inquiry is not in dispute: Claimant was assigned as Mechanic on the second shift at the Cleveland garage on October 22, 1971. He reported for work and clocked in. Several minutes later he clocked out and left the garage. On October 25, 1971 Claimant received a letter from the Fleet Maintenance Supervisor stating in part:

"My Supervisor, Mr. DeFlorio, looked for you to assign work but could not find you and since you walked off the job without permission, we can only assume that you quit and we accept your resignation.

As of this date, October 22, 1971, your employment with REA is terminated."

By letter dated October 27, 1971 Claimant requested a hearing under Rule 35. By telegram of the same date, Carrier notified Claimant that "an investigation and hearing of your grievance will be held \*\*\* on October 29, 1971, at 10:00 a.m." This telegram was in apparent response to Claimant's letter.

Rule 35, the Discipline-Investigation rule, provides in pertinent part as follows:

"(a) An employe \*\*\* shall not be dismissed for incompetence, nor shall such employe be disciplined or dismissed without first being given a fair and impartial investigation by an official of the Company. \*\*\*." (Underscoring added).

Carrier's position may be summarized as follows: (1) Claimant was not dismissed on October 25; Claimant was subsequently dismissed after the investigation and hearing of October 29; and (2) even if the October 25 notice was improper, the October 27 notice was valid in every respect, asserting that this Board has ruled that an initial improper investigation does not nullify the result of an identical second investigation that was proper. (Citing Second Division Award No. 5987).

The Board finds that Claimant was not afforded an investigation in conformity with Rule 35. Despite Carrier's assertions to the contrary, Claimant was terminated as of October 22, 1971 as stated in the Supervisor's letter of October 25. This was in clear contravention of the rule.

Carrier's reliance on Award No. 5987 is misplaced. The factual circumstance in Award 5987 is readily distinguishable and has no application in the instant dispute.

#### A W A R D

Claim is sustained.

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Award No. 6738  
Docket No. 6435  
2-REA-MA-'74

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1974.

