

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

Parties to Dispute: (System Federation No. 12 Railway Employees'
(Department A.F.L.-C.I.O. - Carmen
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement the Carrier unjustly dismissed Car Inspector George White from service on November 23, 1973.
2. That the Carrier erroneously charged Mr. White with violation of Rule 9 of the General Rules of the Chicago and North Western Transportation Company, unauthorized possession of merchandise.
3. That accordingly the Carrier be ordered to reinstate Mr. White to service with seniority rights unimpaired, compensate him for all time lost, and that he be made whole for vacation and health and welfare benefits.

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.

Claimant was notified by letter of October 15, 1973, to appear on October 18, 1973, for hearing on charges of having unauthorized possession of merchandise entrusted in Carrier's care. The hearing was rescheduled for October 30, 1973, at the Local Chairman's request and was held on that date without Claimant or his representative being in attendance.

Petitioner points out that the Local Chairman had sent a letter to Carrier on Saturday, October 27, 1973, by registered mail, requesting a further postponement of the hearing until after December 12, 1973, when a court case involving the same charge might be concluded. The Post Office receipt shows that the letter was not delivered until October 31, 1973.

That Claimant and his representative received due notice that the hearing was scheduled for October 30, 1973, is undisputed. This is not a situation where he was not given adequate time to prepare for hearing or where there was some question as to whether he actually received notice of hearing or where the notice was ambiguous (cf. Second Division Award 5973 where some of these questions did exist). Under these circumstances, it was Claimant's obligation to make certain that the hearing would be postponed and he could not rely on a letter sent during the weekend to postpone a hearing that he knew was scheduled for the following Tuesday. When he chose not to appear at the hearing without having been advised that it had been postponed, he did so at his peril (see Second Division Award 5987 and S.B.A. 235 Award 1685). The mere fact that a request for postponement had been made did not mean that it had been granted.

There is no evidence that Claimant's failure to attend the hearing or to contact Carrier by telephone or any other means to ascertain the status of his request was due to an emergency situation or any fault of Carrier. In this setting, it was not improper for Carrier to proceed to hold the hearing despite Claimant's absence.

At the hearing, Carrier's Lieutenant of Police testified in considerable detail that he observed Claimant and another employee, Anthony Lazzaro, carrying cartons of merchandise from a railroad car to the parking lot and then placing them in the trunk of Lazzaro's automobile. His statement was corroborated in material particulars by the testimony of Special Agent Badell and by a written statement of Mr. Lazzaro. Both Claimant and Lazzaro pleaded guilty to a reduced charge of a misdemeanor when they appeared before the Cook County Criminal Court to answer criminal charges regarding the incident.

In the light of this record, we find no valid basis for setting aside Carrier's findings of fact and assessment of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /es
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of August, 1975.