

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician M. E. Sholtis was unjustly dismissed from service effective June 2, 1977.
2. That, accordingly, the Carrier be ordered to restore him to service with all seniority rights unimpaired, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 6% annual interest on all such lost wages, also reimbursed for all losses sustained account loss of coverage of health and welfare and life insurance agreements during the time held out of service.

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 employees 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.

This is a discipline case in which Electrician M. E. Sholtis was dismissed from service following a hearing, in absentia, on the charge:

- "1. Giving false information at a company investigation on May 2, 1977, held in the office of the Shop manager at Harrisburg Locomotive Terminal, Harrisburg, Pa.
2. Being absent from duty without permission on March 14, 23 and 24, 1977.

- "3. Using 'pain' as a result of a personal injury received while on duty at approximately 1:00 A.M. on April 6, 1977 as an excuse to be absent from duty the same date, although you worked at Three Mile Island, Middletown, Pa. from 8:00 a.m. to 4:30 p.m. the same date, April 6, 1977."

At the hearing Claimant's Union representative was present and participated throughout. However, Claimant elected not to appear. Before the Board, petitioner has argued that the entire proceeding was improper and should be declared null and void because Claimant was not permitted to choose his own representative, and, in any event, Carrier did not substantiate the charges as made.

The applicable Rule in this case provides in pertinent part:

"If he desires to be represented at such trial, he may be accompanied by his Union representative.***"

From the record the Board learns that Claimant indicated a desire to have the Local Chairman (K. L. Mandis) represent him. However, Mandis at the time was hospitalized and had designated the Local President (E. J. Breach) to handle matters during that period. As previously indicated, Breach was present for the scheduled hearing and participated in it.

Petitioner's contention in this regard is not well taken. The day-to-day functions of both the Carrier and the Local Union cannot be frustrated by the unscheduled, unforeseen absences of one of the Local Union Officers. The record shows that Local President Breach had previously participated in the investigative hearing which precipitated charge No. 1, and that he actively and knowledgeably participated in the hearing which resulted in the dismissal. Petitioner has failed to show that Claimant's rights were in any way jeopardized or that the clear language of the applicable Rule was violated. Therefore, the Board must deny the contention in this regard.

Petitioner further alleges that the statements introduced into the hearing on May 24, 1977, from the Clerk-Receptionist, Medical Officer and from the Carrier's Police Officer amounted to hearsay evidence and therefore were inadmissible. While the better procedure would have been to have the two Carrier employees offer direct testimony at the hearing, the Board cannot say that the statements, in themselves, are inadmissible. As stated in Award No. 7347:

"Such written statement is not a 'fatal' defect, but is subject to the same limitations as other forms of hearsay evidence, namely while it may be admitted, it should be carefully weighed, once admitted, for its probative value."

On the merits, the hearing record contains substantial evidence, including Claimant's own admissions relative to the unauthorized absences on the three dates in question, to support the conclusion that discipline was both justified and required. There is, however, no evidence in the record to indicate that Claimant has had any prior assessment of discipline. Therefore, in this case the Board repeats the principle set forth in Third Division Award No. 19537 which says:

"Discipline generally has three goals: punishment of an employe, correction and training of the employe, and as an example for training purposes for other employes....."

and give Claimant one last chance to demonstrate that he desires to continue his employment relationship with Carrier and the Claimant must recognize, however, that repeated unauthorized absences and continued "outside employment" to the detriment of Carrier can and will result in permanent dismissal (See Second Division Award No. 6814).

Accordingly, the Board will order that Claimant be reinstated to service with seniority unimpaired, but without pay for time lost.

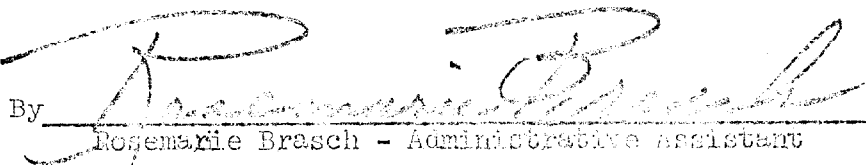
A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.