

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher 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 terms of the Current Agreement, Electrician Marcus Rodriguez was unjustly dismissed from the service of the Consolidated Rail Corporation (Conrail) on March 16, 1978.
2. That, accordingly, the Consolidated Rail Corporation (Conrail) be ordered to reinstate dismissed Electrician Marcus Rodriguez to his service with all rights unimpaired and reimbursed for all wage loss.

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.

It is the position of the Organization that the Claimant was unjustly dismissed. The Organization contends that the Claimant was improperly refused a postponement of the investigation which was sought on the basis that he had only 36 hours notice of the pending investigation and thus he did not have a fair opportunity to prepare a defense. It is further contended by the Organization that the Carrier denied the Claimant a full and impartial trial since the Claimant was restricted from calling a witness who presumably would have testified in his behalf. Finally, the Organization contends that had the Carrier's representatives on the property been more concerned they would have determined that the Claimant was sick and that that was the reason for his leaving the premises.

It is the position of the Carrier that the Claimant received a full and impartial trial and that his guilt was proven at said trial. The Carrier further contends that the discipline assessed was commensurate with the offenses committed and that the discipline of the Carrier should not be disturbed by this Board.

Although, there is some conflicting testimony in the record regarding the Claimant's whereabouts between the hours of 8:40 a.m. and 12:30 p.m., it is clear that had the Claimant been at or about his place of assignment that he would have had the opportunity to see or talk with his foreman. It is undisputed on the record that the Claimant did not seek permission from the appropriate foreman, or for that matter any Carrier representative, to leave his work assignment. Thus, although the record does not support a finding that the Claimant was not attending to duty between the hours of 8:40 a.m. and 12:30 p.m., the record does support a finding that the Claimant did in fact leave the premises of the Carrier without seeking proper permission.

It is true, as the Organization contends, that when the Carrier's foreman saw the Claimant standing by an elevator at or about 1:00 p.m. with his jacket over his shoulder, the Carrier's foreman could have approached the Claimant to determine what his intentions were regarding completion of his work assignment for that date. However, that is putting the burden on the wrong party. If the foreman observed the Claimant then it is reasonable to assume that the Claimant also saw his foreman at or about that time and could have, without significant difficulty, advised the foreman that he was leaving the work site and he may have received permission to do so.

The Carrier has an obligation to see that work is performed in a regular and timely manner by employees on duty. The actions of the Claimant, if followed by others, would create a nearly impossible problem for the Carrier in scheduling and completing work. Since the Claimant did not advise the foreman that he was leaving the premises, the Carrier was unable to seek others to complete the work assignment of the Claimant in this instance. Under these circumstances the Claimant was appropriately charged and found guilty of the above-cited offense.

Addressing ourselves now to the question of whether Claimant received a full and fair hearing, the above-recited chronology of events indicates that the hearing/investigation was scheduled four months prior to its finally being held. The charges brought against Claimant were first noticed to him by letter dated September 23, 1977. At no time during the course of the several postponements was the nature of the charge, or in fact the wording of the charge, changed. Thus, when the Claimant complained at the hearing on February 17, 1978 that he did not have adequate time to prepare a defense his plea fell on deaf ears. Had the Claimant been sufficiently concerned about the nature of the charges against him, he certainly would have made arrangements to have witnesses available and to prepare his defense in sufficient time. A review of the trial records indicates that the Claimant did, in fact, receive a full and impartial hearing.

Therefore, this Board finds that the Carrier's determination of guilt was justified; that the Claimant received a full and impartial hearing; and, that the Claimant's prior disciplinary record justified the extent of discipline imposed in this case.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1979.