

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{  
{ Detroit and Mackinac Railway Company

Dispute: Claim of Employees:

That the Detroit and Mackinac Railway Company violated Rule 32 of the controlling Agreement in dismissing Crane Operator James Smith from its service effective March 8, 1978.

That, accordingly, Crane Operator James Smith be restored to the service of the Carrier and made whole in accordance with Rule 32 of the controlling Agreement.

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 not the sole responsibility of the accused (claimant) to notify his union representative of impending investigation. The carrier has the responsibility as implied by the contract language, and common and past practice on this carrier and in the industry. The accused may not wish to be represented, but the organization has the right, and in fact, duty, to protect the agreement as it applies to all employees, not just the accused.

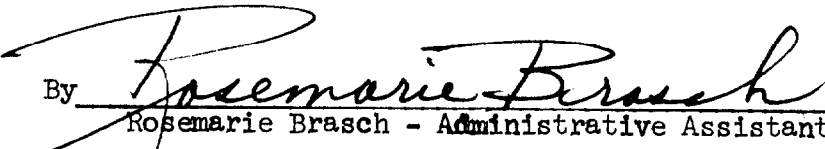
In many cases, where the accused does not request representation, it is based on inadequate knowledge of hearing-investigations, the assumption of innocence and/or lack of understanding of consequences of the hearing findings. There can be other reasons. None relieve the carrier of the notification responsibility. This is a violation of Rule 32.

A W A R D

Claim sustained. Claimant reinstated to service with seniority rights, and all other regular job rights and benefits, and to be compensated for full wage loss sustained while out of service.

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 21st day of May, 1980.