

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated the schedule "A" agreement between the Illinois Central Gulf Railroad and the International Association of Machinists - AFL - CIO, particularly Rule 39 of the agreement when they dismissed machinist A. F. Dawud from service January 26, 1979.
2. That accordingly, the carrier be ordered to pay machinist Dawud all wages lost, including overtime wage losses until restored to service, return to service with seniority rights unimpaired, full restoration of all vacation and holiday losses and all rights pertaining thereto, pay premiums on all Health and Welfare Benefits as paid while in service, pay 10 (ten) percent interest on all lost wages, make claimant whole for all losses and in addition, that his record be cleared of any reference to the investigation and discipline rendered as a result of the investigation conducted January 18, 1979, in accordance with the applicable provisions of Rule 39 of the schedule "A" agreement, dated April 1, 1935, as amended.

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, A. F. Dawud, was discharged from carrier's service on January 26, 1979, for allegedly falsifying a release-to-work form by changing the date he was to report to work from November 13, 1978, to November 18, 1978. Consequently, claimant missed three days of work without carrier's permission. Carrier became aware of the fact that claimant may have modified his release form on November 18, 1978. Claimant was charged on December 27, 1978 and directed to attend a formal investigation into the matter. The investigation took place on January 18, 1979, and claimant was dismissed from service on January 26, 1979.

The organization alleged that this delay from November 18, 1978, to January 19, 1979, was unduly long. Claimant did not receive a prompt hearing. This is in violation of the agreement.

The organization also alleged that the hearing itself was improper, because the hearing officer failed to take into account claimant's testimony. He concluded that claimant was guilty on the basis of a letter from Dr. Davidson, when Dr. Davidson could have been called to testify and be cross-examined.

Petitioner's arguments on these two points are persuasive. From the record of this case, it is clear that claimant was not afforded what could be considered a prompt hearing. Rule 39 of the agreement clearly requires that the hearing be prompt.

The Board is also of the opinion that Dr. Davidson's statement would have been more valid if he had been present at the hearing to answer questions about it.

Carrier was careless in the way it handled the charges and the hearing. While these shortcomings are not fatal to carrier's case, carrier should not have failed to grant claimant his full rights. Given the fact that claimant is not altogether blameless in the instance, it is the opinion of this board that claimant should be returned to work with no back pay.

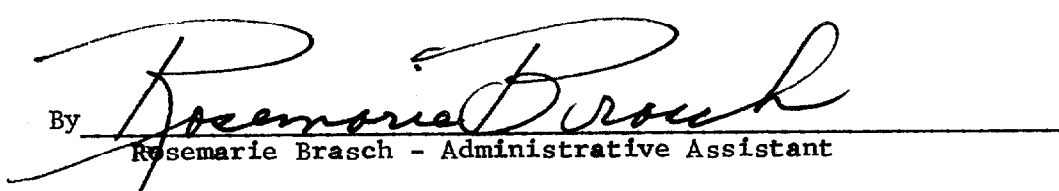
A W A R D

Claimant shall be restored to his former position with all rights and benefits, but without compensation for lost time.

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 18th day of February, 1981.