

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

Parties to Dispute: (Sheet Metal Workers' International Association
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company violated Rules 24 and 15 of the controlling agreement when they arbitrarily dismissed Sheet Metal Worker T. C. Hardwick from service on August 29, 1980, following investigation held on August 14, 1980, at which Mr. Hardwick was not present;
2. That accordingly, the St. Louis Southwestern Railway Company be ordered to compensate Sheet Metal Worker Hardwick as follows:
 - a) Restore him to service with all seniority rights unimpaired;
 - b) Compensate him for all time held out of service;
 - c) Make him whole for all vacation rights;
 - d) Pay Hospital Association dues or insurance for all time out of service;
 - e) Pay premium for Group Life Insurance for all time out of service;
 - f) Pay for all holidays;
 - g) Pay for all sick pay;
 - h) Pay for all insurance premiums;
 - i) Pay for all jury duty lost.

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 discharged from the service of the Carrier following a formal investigation on the charges of violating Rule 810 of the Rules and Regulations Governing Mechanical Department Employees (failure to protect assignment). The

Organization contends that the failure of the Carrier to postpone the hearing and the absence of the Claimant from the hearing operated to deny the Claimant a fair and impartial hearing.

The record indicates that the Carrier sent a certified letter to the Claimant on August 6, 1980 apprising him of the charges as well as the time and place of the investigation. Notices that the letter was to be picked up at the post office were sent to the Claimant by the U. S. Postal Service on August 7, 1980 and also on August 12, 1980. The investigation took place on August 14, 1980.

The record shows that on the night before the hearing, Claimant left a message at the home of the Organization's representative informing him that the Claimant would be unable to attend the investigation.

During the hearing, both the union representative and the hearing officer attempted, without success, to reach the Claimant at home. Over protests by the union representative, the investigation continued. Claimant was absent from work 31.6% of his assigned hours, not all unexcused.

The Organization's first contention is that the Claimant did not receive notice of the hearing. Although the record indicates that two attempts were made to deliver the notice letter, the letter was not picked up by the Claimant until August 13, 1980. However, this Board finds that the Claimant was notified based upon the fact that Claimant had called the representative's home the night before the hearing stating that he would be unable to attend. Surely, the Claimant knew of the investigation. Avoidance of the receipt of the actual notice letter will not operate as a bar to the conduct of a hearing, especially as in this case, where evidence is contained in the record which demonstrates that the employee actually knew of the hearing. Furthermore, it is well established that the Carrier is not an insurer of the Claimant's receipt of the Notice of Investigation. The Carrier is, however, required to use the usual and reasonable means of providing notice of an impending investigation; a standard that has clearly been met in this case. (See Award 324, Special Board of Adjustment No. 100).

The Organization's second contention is that failure of the Claimant to be in attendance resulted in an unfair and biased investigation and that the Claimant's rights have been abridged. This Board has consistently ruled that a person who has properly been notified of the time, place and date of hearing and fails to make his appearance does so at his own risk. (See Second Division Awards 1693 and 5987).

With respect to the Carrier's formal charges, this Board has clearly stated on numerous times that no carrier can be expected to operate a safe and efficient operation unless employees take seriously their duty and obligation to report to work and protect their assignment. Clearly 31.6% absenteeism is excessive, and the Carrier was justified in their penalty of dismissal. Without considering any prior discipline for reasons other than absenteeism, it is found that the Claimant did not take his responsibility to protect his job assignment seriously.

Form 1
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Award No. 9172
Docket No. 9271
2-SLSW-SM-'82

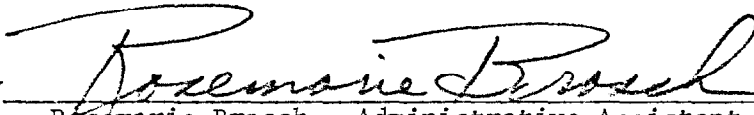
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June, 1982.