

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
(  
( Burlington Northern Railroad Company

Dispute: Claim of Employee:

1. That in violation of the current Agreement, Laborer John Alvarez, Denver, Colorado, was unfairly dismissed from service of the Burlington Northern, Inc. effective April 20, 1979.
2. That accordingly, the Carrier be ordered to make John Alvarez whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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 Alvarez was employed as a laborer at Carrier's 23rd Street Roundhouse Repair Track, Denver, Colorado, with working hours of 7:30 A.M. to 3:30 P.M. On March 12, 1979, after reporting for work, he was assigned to move tie plates from one end of a car to the other end. While doing so, Claimant suffered a back injury and filled out a personal injury report indicating "strained back while moving tie plates". He then left Carrier's property without previously informing his supervisor or securing permission to do so.

Although scheduled to work the following day, March 13, Claimant did not report at the designated starting time and location of his assignment. He continued to be absent through March 19, 1979, when he was cited to attend an investigation "for the purpose of ascertaining the facts and determining your responsibility in connection with your allegedly being absent without proper authority from March 12, 1979 to this date as a Laborer at the 23rd Street Denver Repair Track".

The investigation was held as scheduled, and while Local Chairman P. H. Mayhew appeared on behalf of Claimant, Mr. Alvarez did not appear. The following testimony was adduced:

- "Q. I also hand you a copy of his employee registration form which is signed by John Alvarez on 8/23/74, and a copy of his W-4 form, same date. Would you please read the addresses on those two forms?
- A. 4791 High, Denver, CO, 80216. Same address on W-2.
- Q. For the record, would you please read the return for certified mail address to Mr. John Alvarez, the address along with the address on the copy of the letter sent by certified mail, 363390 mail and also a copy of the return receipt and insured certified mail. Are those the same address?
- A. 4791 High, Denver, CO, 80216, the same address on all of them.
- Q. And this is the last known address of Mr. John Alvarez, is that correct?
- A. That is correct."

We first address the Organization's claim that Carrier failed to comply with Rule 28(c) of the Agreement, which the Organization quotes with emphasis supplied:

"At least five (5) days advance written notice of the investigation shall be given the employe and the appropriate local organization, in order that the employee may arrange for representation by a duly authorized representative and for presence of necessary witnesses he may desire. The notice must specify the charge for which investigation is being held."

It is the Organization's position that the burden is on Carrier to obtain actual service of the notice on the employe. No award is cited in support of this position and indeed we believe there is none. Carrier notified Claimant by registered mail addressed to the last address furnished to Carrier by Claimant. This is sufficient unless there is a positive showing that nondelivery of the notice was not the fault of the employe. No such proof is in the record. We cannot accept unsupported assertions that Claimant was undergoing medical treatment.

The record fully supports Carrier's finding that Claimant violated Rule 665. He walked off the job without permission. He sought no medical leave. He did not try to mark off for any purpose. Yet he did not protect his job. All of this proof was properly made at the investigation and Claimant was accorded due process in every respect. Termination was warranted under the prevailing circumstances.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.