

The Second Division consisted of the regular members and in addition Referee George V. Boyle 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 and Aerospace Workers - AFL - CIO, particularly Rule 39 of the agreement when they dismissed Machinist Apprentice F. L. McMillan from service on September 28, 1979.
2. In behalf of Apprentice F. L. McMillan, claim is herewith filed for:
 - a. Eight (8) hours pay for each and every day that Apprentice McMillan was held out of service beginning September 28, 1979 until his reinstatement to service on April 21, 1980.
 - b. All vacation, overtime and holiday losses.
 - c. All health and welfare premiums: Travelers Policy 23000, Provident Policy R 5000, Aetna Policy GD12000 and I.C.G. Hospital Association dues.
 - d. Pay Railroad Retirement premiums including sickness and unemployment premiums.
 - e. Pay six (6) percent interest on all lost wages.
 - f. Make claimant whole for all losses including all losses caused by loss of days of apprenticeship.

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.

The Claimant was hired as a Machinist Apprentice on March 29, 1979 at the Carrier's Woodcrest Repair Shop in Chicago, Illinois. On September 12, 1979 an incident occurred which caused the Carrier to dismiss him on September 28, 1979.

His dismissal letter states: "... the facts were developed that you had been insubordinate to your supervisors; also, your personal file was reviewed, and it has been determined that you resent authority and that you are incompatible with other employees." On April 21, 1980 the Claimant was reinstated without back pay.

The Employes, on behalf of the Claimant, assert a number of substantive and procedural errors which require that he be made whole for all time lost plus accrued fringe benefits, interest on lost wages and losses caused by time deducted from his apprenticeship.

In written and oral presentations the Employes alleged fifteen (15) separate matters for the Board's consideration, each of which has been given due and careful review and evaluation. There is no need, however, to restate and comment on each since two of their allegations are germane and valid in upholding this grievance.

Without addressing the main charge of insubordination, the Board is persuaded that the Carrier acted improperly in denying the Claimant a fair and impartial hearing by refusing his legitimate and timely request for a postponement of his hearing.

The Claimant was notified by letter of September 14, 1979 of the formal investigation to be held on September 25. The Employes requested a postponement on September 20 and were informed on September 24 that their request was denied. The hearing was then held the following day, on September 25, where the Employes renewed their request for postponement without effect.

In its submission to the Board, the Carrier argues that, "The Company did not grant a postponement of the hearing because the Organization failed to show the need for one."

The Board finds to the contrary, however.

The Employes' Organization wrote in the letter of request for a ten (10) day postponement that the local chairman would be on vacation until September 29 and then would need additional time to develop the defense. Also, at the hearing, the union representative present advanced an additional reason for a postponement, i.e. that a "Key witness" was also unavailable due to vacation. Further, one of the two representatives present pointed out that he had just returned from vacation the previous day and had not had adequate time to prepare for the investigation.

In denying the Employes' request, the Carrier makes value judgements: 1) that eleven (11) days is sufficient time to prepare a defense, 2) that the absent witness is not "key", 3) that the presence of the local chairman is not necessary nor is his expertise necessary for the preparation of the defense, 4) that the union representatives present are competent to handle the Claimant's case and 5) that the Claimant's right to proper defense has not been hindered.

In view of the fact that postponements are granted almost routinely in discipline and discharge cases because of the seriousness of the consequences and for less explicit and less urgent reasons, the Carrier's insistence upon proceeding without delay despite the reasonableness of the Organization's request is

incomprehensible. The Board feels that the Carrier erred in not adequately providing that, "No employee shall be disciplined without a fair hearing", as provided in Rule No. 39 "Discipline".

While the Carrier should not be expected to grant all and any requests for postponements, pro forma, and certainly it has a right to expect that the Employees will cooperate in expediting the investigation procedure, yet the rights of the Claimant and the obligations of the union organization cannot be abridged in a cavalier fashion.

The second error of the Carrier is contained in its dismissal letter wherein it is stated, "... your personal file has been reviewed, and it has been determined that you resent authority and that you are incompatible with other employees."

While the hearing officer states at the investigation that the Claimant's personal record is being reviewed, "for consideration of the measure of discipline, if any, which may be assessed to you in this case," the dismissal letter asserts two new charges growing out of the evaluation and conclusions with respect to a letter in the file dated May 23, 1979 and a "Performance Report by a previous supervisor," (apparently undated). The Claimant was never charged with, nor was evidence and testimony produced to show resentment of authority and incompatibility with other employees. Thus, the Claimant could neither challenge nor refute those charges which entered into the Carrier decision to dismiss him. Thus his dismissal was defective and his grievance is valid.

The Board finds that the Carrier erred in dismissing the Claimant from service by virtue of defects in its charges and by denial of a fair and proper hearing. The Claimant is entitled to be made whole as provided by Rule No. 39 of the collective agreement in effect covering the parties to this dispute.

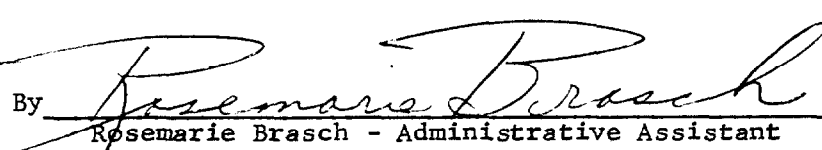
A W A R D

Claim sustained in accordance with the Findings.

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 11th day of August, 1982.

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