

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( System Council Number Eight  
(  
( Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the agreement effective September 1, 1949, in particular Rules 35 and 36, when it unjustly withdrew Electrician T. A. Veres from service as of October 30, 1981 and subsequently unjustly dismissed Mr. Veres on November 19, 1981 for alleged violation of Rule G. Mr. Veres returned to service on January 20, 1982, as ordered by the Carrier.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reinstate Electrician Veres with all of his seniority and other rights unimpaired, compensate him for all lost wages and benefits, and expunge the record in connection with this matter.

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 employes 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 herein was charged with a Rule G. violation, and after a hearing, which he did not attend, was dismissed from the Carrier's service.

The Organization argues that the Claimant was not provided proper notice of the hearing, citing the precise charge, and that the charge of alcohol consumption is not borne out by the facts as brought out at the hearing.

The Carrier points out that, as a matter of record, on November 2, 1981, a letter was sent to the Claimant to inform him that a hearing would be held on November 6, 1981, concerning his alleged violation of Rule G. This letter, which had been sent to the Claimant's last known address, was returned by the Postal Service Marked "Moved, Left No Address".

Ultimately, the Claimant was notified of the hearing on the morning it was to be held. He then requested a postponement on the ground that he needed additional time to prepare his defense for the hearing, and because he had witnesses to call. The Carrier denied this request.

There is nothing in the record, except for the Claimant's assertion, that he had notified the Carrier of his address change. The Carrier's contentions with respect to its notification process is not an unreasonable one.

With respect to the Claimant's refusal to attend the hearing, it is true this decision was of his choice. However, the Carrier bears a heavy responsibility to assure that all of the facts and circumstances relative to the charge under investigation are fully disclosed at the hearing. Certainly, the Claimant's specific request for a postponement because he needed time to prepare his defense and notify a witness who he wanted to appear -- when balanced against the Carrier responsibility for a fair trial -- was not an unreasonable one. Moreover, the record shows that the employee had extremely short notice of the trial. The Carrier's refusal of a postponement, under the facts and circumstances of record, was not a reasonable action on its part.

The Claimant's right to be present at a hearing, whose express purpose was to determine the facts surrounding the charge levied against him, is so basic to the due process provision of parties' controlling agreement that we find the Carrier's refusal to delay the hearing, under the facts of record, was unreasonable.

A W A R D

The claim is sustained to the extent that the Claimant shall be restored to the service, with seniority rights unimpaired, but without any compensation for time lost while out of service.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1984