

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(AFL-CIO - District Lodge No. 19
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist F. L. Lewis (hereinafter referred to as Claimant) from service on November 21, 1979.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss.

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, Francis C. Lewis, entered the service of the Carrier on October 6, 1976. He was last employed as a machinist at the Carrier's diesel shop in Hinkle, Oregon.

On November 13, 1979, Claimant was cited for a formal hearing to be held on November 16, 1979, and charged with violations of Rules B, 700, 702, and 704 of Form 7908 of the Rules Governing Duties and Department of Employees.

"Rule B: Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the Railroad for an explanation.

Rule 700: Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the Railroad will not be subjected to criticism and loss of goodwill, or who do not meet their personal obligations.

"Rule 702: Employees must report for duty at the designated time and place. They must be alert and attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

Rule 704: Employees are required to report any misconduct or negligence affecting the interest of the Railroad. Withholding information or failure to give factual report of any irregularity, accident, or violation of the rules is prohibited.

Specifically, Claimant was charged with being dishonest and absent without proper authority to be absent in connection with the July 20, 1979, filing of a report alleging an on-duty personal injury on July 12, 1979. Furthermore, Claimant was charged with failing to obtain the proper authority to be absent from work on several days in late July, 1979. Finally, Claimant was charged with being dishonest by failing to report to the Company that he was in jail for the period of time that he was requesting compensation for an on-the-job injury.

Carrier also dismissed the Claimant because Claimant had been dishonest by attempting to conceal his jail sentence resulting from his guilty plea to a charge of second-degree theft and by claiming an alleged personal injury in order to get time off from work in order to serve his jail sentence. Claimant withheld the information from Carrier's claims representative and accepted a Seven Hundred Dollar (\$700) cash settlement for missing work for the period July 22, 1979, through August 2, 1979, even though the real reason for his missing work was that he was in jail. Claimant never informed the claims representative that he was in jail and never informed the Company that he had pled guilty to a criminal charge.

Moreover, the Carrier argues that Claimant did not request permission to be off work on the days in question and never informed the Foreman that he was unable to cover his assignment.

Finally, the Carrier argues that the claim should be denied because the Claimant voluntarily walked out of the investigation stating that he could no longer continue. Carrier contends that the action of the Claimant exemplifies the Claimant's disrespect for the authority and lack of concern for his job.

Carrier also contends that Claimant had previously received a 30-day deferred suspension for failure to promptly report a personal injury on the job and that Claimant had been counseled on seven other occasions for various offenses.

The Organization contends that the testimony adduced at the hearing does not support the Carrier's allegations. The Organization argues that the Claimant sustained an on-the-job injury and was under the care of a doctor during the critical period in late July, 1979. The Organization also argues that the hearing was unfair and not impartial and that the testimony given by the witnesses was biased.

This Board finds that the evidence is clear that the Claimant entered a plea of guilty to the charge of second-degree theft. The Carrier considers it to be conduct unbecoming an employee. This Board will not second-guess the Carrier's judgment on that issue.

Moreover, the Board finds that the Claimant did not notify his immediate supervisors that he would not report for duty in late July, 1979. The Carrier finds that this is a rule violation and this Board will not set aside that ruling.

Finally, the Carrier disciplined the Claimant because he accepted compensation pay for all alleged on-the-job injury when he was in jail. Hence, the Carrier concluded that the Claimant attempted to cover up his jail sentence by claiming an alleged personal injury in order to lay off work and then accepted compensation during that same period.

The Board finds that the Claimant had a poor work record with several disciplines, including a 30-day deferred suspension. That disciplinary record made it clear to the Claimant that any further infractions of a serious nature may lead the Carrier to terminate his employment.

This Board finds that the Claimant was afforded a fair hearing. The Board also finds that there was sufficient evidence adduced proving several serious rule violations on the part of the Claimant.

It is well settled that where the record contains substantial evidence in support of Carrier's findings and there is no showing of arbitrary action, this Board will not weigh the conflicting evidence and substitute its judgment for that of the trier of fact. Moreover, there is no evidence that the action of the Carrier in this case has been arbitrary or unreasonable. There is sufficient evidence of several rule violations on the part of the Claimant and documentary evidence of previous disciplinary action taken toward the Claimant. This Board will not substitute its judgment for that of the Carrier unless it finds the action of the Carrier to be arbitrary and unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1984