

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Southern Railway Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Laborer Willie Bivins, S. S. No. 259-72-5433, was unjustly dismissed from service of the Southern Railway Company on August 7, 1980, after a preliminary investigation was held on August 7, 1980, in the office of Mr. B. S. Swicegood, General Foreman.
2. That accordingly Laborer Willie Bivins be restored to service with his regular assignment at Pegram Shops, compensated for all lost time, vacation, health and welfare, hospital, life and dental insurance premiums be paid effective August 7, 1980, and the payment of 6% interest rate be added thereto.

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.

Central to the disposition of this dispute are provisions of Rule 34, which read as follows:

*RULE 34 - (a) An employee will not be removed from service or disciplined (including discharge) except for just and sufficient cause after a preliminary hearing. This does not apply to new employees removed from service within sixty (60) days of hire, account failure to approve application for employment.

(b) During the preliminary investigation (the discussion of events leading to any disciplinary action), the right of an employee to be accompanied by his duly accredited representative (local chairman or committeeman) should he so desire, and provided he is readily available, is recognized. Any discipline assessed at the preliminary investigation will be confirmed by letter addressed to the employee (with copy to his local chairman) within five (5) days from the date thereof which shall include the specific reasons for the assessment of such discipline.

"(c) If such employee disagrees with the disciplinary action taken, he may himself, or through his duly accredited representative, request a formal investigation; such request shall be submitted in writing within five (5) days from the date of written confirmation of the assessment of discipline given the employee under Section (b) above. If such request is made verbally at the time discipline is assessed under paragraph (b) above, the imposition of the discipline will be held in abeyance pending the completion of a formal investigation; provided such verbal request is confirmed in writing within five days thereof. However, discipline will not be held in abeyance in any case involving a major offense..."

Rule 34 was amended on May 8, 1975 to provide further as follows:

"(a) If discipline is assessed at a preliminary investigation and the employee involved accepts responsibility, but later feels that he erred or that the discipline was excessive, he may request formal investigation, provided such request is made in writing within three days of the date of the preliminary investigation, in which event the balance of the discipline assessed shall be held in abeyance pending completion of the formal investigation under the principle of Paragraph (c) of Rule 34. However, such discipline shall not be held in abeyance in a case involving a major offense...."

The Claimant herein was subject to a preliminary investigation conducted by a Carrier official early on August 7, 1980. The Claimant was accompanied by an Organization representative. He was advised that he was dismissed from service based on charges of excessive absenteeism, tardiness, getting off early and failing to report off. The Claimant disagreed with these findings when they were given to him, and the Carrier took the first steps toward setting up a formal investigation and also restored the Claimant to duty.

Within an hour or so, the Claimant advised that he did not wish a formal investigation, and the Carrier acknowledged this information. Still later the same day, the Claimant again advised the Carrier that he wished to proceed with a formal investigation, and the Carrier acknowledged this by letter as follows:

"I refer to my letter to you dated August 7, 1980 relative to your verbal statement that you had changed your mind and did not want a formal investigation concerning the disciplinary action taken against you on August 7, 1980 which was dismissal from service effective at 8:25 a.m., August 7, 1980.

"At approximately 12:15 p.m., August 7, 1980, you verbally informed me that you had changed your mind again and wanted to request a formal investigation which was agreed to, and you were allowed to return to work with the imposition of the discipline assessed being held in abeyance pending the completion of a formal investigation."

On August 12, 1980, the Claimant submitted a letter requesting a formal hearing. This, however, was not within the three days required by the amendment of Rule 34 cited above. The Carrier argues, therefore, that the dismissal based upon the preliminary investigation must stand, since the Claimant -- upon his second change of mind -- failed to request a formal investigation "in writing within three days of the date of the preliminary investigation". Formal notice of dismissal was given on August 13, 1980.

Rule 34 and its amendment include a variety of sharply defined time limits. These were devised and agreed to by the parties, and the Board may not vary these clear terms. This remains the case despite the allegation on behalf of the Claimant that he was unaware of the requirement.

Based on this, examination of the basis of the Carrier's dismissal of the Claimant is not required.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of November 1984.