

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Metro-North Commuter Railroad

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) has unjustly dismissed Electrician Ms. Hannah Haimson from service, effective June 16, 1982.
2. That accordingly, the Metro-North Commuter Railroad be ordered to restore Electrician Ms. Hannah Haimson to service with seniority unimpaired and with all pay due her from the first day she was held out of service until the day she is returned to service, at the applicable Electrician's rate of pay for each day she has been improperly held from service; and with all benefits due her under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due her, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due her under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to her had she been working in the aforementioned period in order to make her whole; and expunge her 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 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.

On May 21, 1982, Claimant, Ms. Hannah Haimson, was sent by certified mail a Notice of Trial to be held on June 3, 1982. No response was forthcoming in that the Claimant did not certify receipt of the notice. On June 4, 1982, Carrier sent a notice of postponement by certified mail to Claimant of the rescheduled hearing to be held on June 11, 1982. Claimant did not receive the registered mail. The investigation was held in absentia over the alleged charges that Claimant had failed to report for duty and to properly report off on the following dates: May 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 1982. After the investigation, Claimant was found guilty as charged and was dismissed in all capacities from Carrier service.

As a preliminary point, this Board underlines that all facts and/or lines of argument used by either party in their Ex Parte Submissions, which were not a part of the record as handled on property, cannot now be properly considered before this Board. This position is a firmly established position of the National Railroad Adjustment Board, codified by Circular No. 1 and consistent with numerous Awards in this Division (Second Division Awards 7853, 7631, 7484, 7241).

With respect to the proceedings in absentia, there is ample support in past Awards to this procedure. Where there has been service of the notice of investigation, by certified mail, return receipt requested, addressed to the last address of Claimant on file, it is prima facie evidence of Claimant's knowledge of the hearing. If absence is unexplained by credible evidence then the Carrier may proceed with the hearing and discipline (Second Division Awards 8187, 7853 and Third Division Awards 23251, 15059, 15007, 13757). In the instant case, this Board finds after a close review that the Claimant was not denied her rights to a fair and impartial trial.

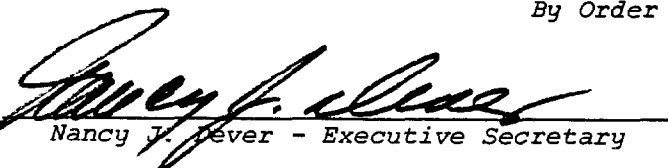
With respect to the merits of the case, this Board is satisfied that the evidence adduced at the investigation substantiates the charges. The record indicates that Claimant reported off sick on February 26, 1982 and did not return for work during all of March, April and May, including the dates in the charge. There is nothing in the record to substantiate that the Claimant was ever sick and in fact her last contact with Carrier indicates she was moving during her illness. No new address or further contact with Carrier was ever submitted into the record. Claimant did not attend the investigation to make her defense and considering the whole of the case as developed on property there is no basis for judging the discipline assessed by the Carrier as unreasonable, arbitrary or capricious (see Second Division Awards 7348, 5049). As such, the Board will not disturb the Carrier's determination in this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.