

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10343
Docket No. 9828
2-CMStP&P-EW-'85

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(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 current agreement when it unjustly dismissed Electrician M. J. Patock on July 16, 1981 for alleged failure to protect his assignment.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician M. J. Patock whole by reinstating him to service with all seniority and other rights unimpaired and compensating him for all lost wages and benefits and clearing his 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.

Claimant, an Electrician at Carrier's Bensenville, Illinois Diesel House, was hired on December 12, 1980, and was assigned to work the 11:00 P.M. to 7:00 A.M. shift. On April 6, 1981, and continuously thereafter, Claimant was absent from work.

On May 5, 1981, Carrier sent Claimant a letter advising him that his continued failure to contact Carrier as to his physical condition by May 15, 1981, would result in a formal hearing to investigate the matter. Claimant failed to provide such notification as was requested and, in letter dated May 19, 1981, Carrier informed Claimant that a hearing would be held on May 27, 1981 to investigate the following charges:

- "1. For failure to protect your assignment of 11:00 pm to 7:00 am from April 6, 1981 to date, May 19, 1981.
2. For your alleged failure to comply with Rule 16 of the agreement...."

The hearing was conducted as scheduled but Claimant, for some unknown reason, did not attend. Organization Representative, at the hearing, requested a postponement but the request was denied by the Hearing Officer.

Pursuant to said hearing Claimant was found guilty as charged and he was terminated from his employment with Carrier effective July 16, 1981.

Organization's basic position is that Carrier failed to meet its burden of proof in the instant case and Claimant's dismissal, therefore, was improper. Specifically, Organization maintains that there is insufficient evidence in the record to establish that Claimant is guilty of the infraction as charged and that the Hearing Officer, for no good reason, denied Organization Representative's request for a hearing postponement. In this regard, Organization maintains that there is nothing in the record to indicate that Claimant received his statement of charges or was properly apprised of the hearing; that Claimant "deserves his day in court", which he did not get; and that the Hearing Officer's denial of a postponement of the hearing was a violation of Claimant's due process rights.

Carrier argues that Claimant's absence from April 6, 1981 to May 19, 1981, and his failure to notify Carrier of said absences in advance is sufficient proof of Claimant's infractions. Thus Carrier maintains that, pursuant to the scheduling and convening of a hearing to investigate charges, it is Claimant's right to rebut those charges which have been asserted. In the instant case, according to Carrier, such a right was provided, but Claimant failed to attend his own hearing. Carrier contends that Claimant was properly notified of his hearing, and there is nothing in the record to indicate otherwise.

Regarding the Hearing Officer's failure to grant a postponement of the hearing, Carrier asserts that such a request may be granted at the Hearing Officer's discretion; Organization did not request said postponement until the hearing was convened which was some eight (8) days after both Claimant and Organization had been properly notified of said hearing; and no good reason was offered or suggested as to why a postponement should have been granted or why Claimant was unable to attend. Lastly, Carrier posits that Claimant's short period of service with Carrier (7 months), when compared to his abysmally poor attendance record, sufficiently demonstrates that he is undeserving of continued employment, and his termination, therefore, was proper and should remain undisturbed.

The Board is compelled to sustain Carrier's position as presented herein. Claimant's attendance record, for a short term employee, is "abysmal". An examination of the entire record suggests that Claimant, for whatever reason, has abandoned his job.

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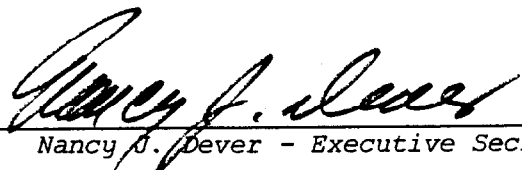
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1985.