

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers, AFL-CIO  
( National Railroad Passenger Corporation (AMTRAK)

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation (AMTRAK) be ordered to make whole Machinist D. Daniel for any and all losses as a result of a 30 day suspension in accord with the prevailing Agreement dated September 1, 1977 as subsequently amended.

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 was scheduled to attend an investigation into his alleged unexcused absences on October 23, 1981. This investigation was postponed by mutual agreement and was reset for October 27, 1981. Claimant received the notice for investigation. On the day that the investigation was to be held Claimant did not appear. At the investigation the Representative of Claimant introduced a letter from Claimant dated October 22, 1981 which stated:

"Dear Mr. Brown:

This letter is to inform you that I will be hospitalized and under doctors care for an in definite period. I will be entering the hospital 10-26-81, and am there informing your office that I will not be at work until such time as when I am released by my physician.

Your understanding of this letter will be appreciated and in concurrence with the existing agreement."

The Investigating Officer attempted to contact Claimant by telephone with no success. He stated that the letter was self serving and there was no evidence of its authenticity, therefore the investigation would proceed. Proceeding with the investigation was objected to by the Representative.

The proof of the absences was made at the investigation by the introduction of Employee time sheets. These showed that the Claimant had been absent without pay during the dates named in the charges.

The sole issue before this Board is the propriety of proceeding with the investigation. The record, as supplemented after the investigation, reveals what had occurred.

Claimant apparently had an alcohol problem. The Claimant had been counselling with the Employee Assistance Office of Carrier since August 28, 1981. The office had suggested that Claimant take advantage of the Employee Assistance Program and get in-patient treatment. This he refused to do. The program is a non-contractual program sponsored by the Carrier for the assistance of all of its Employees. Claimant came to the office on October 21, 1981 and volunteered for the treatment recommended. At that time the office arranged for the Claimant to check into the Horsham Hospital on October 26, 1981. He was released from the hospital on December 12, 1981. Because the supervision at his facility did not know of his whereabouts, he was considered as having resigned under the terms of the Agreement. He had been denied a medical leave of absence because he had furnished no evidence of illness. When the hospitalization was discovered, Claimant was reinstated.

The initial letter for investigation to be held on October 23, 1981, was dated October 14, 1981, and had been received by the Claimant on October 23, 1981. The second letter rescheduling the investigation was dated October 21, 1981, and was received by the Claimant on October 23, 1981. It is obvious that the Claimant made the arrangements which he had long rejected on the day that he received the notice of the initial investigation. Certainly the evidence reveals that he knew where he was going and who (the Employee Assistance Office) was responsible for him going there. It would have been a simple matter to reveal enough details that the Investigating Officer could have made a quick check on the verity of the letter. That he was reluctant to hold the hearing in absentia is apparent from the fact that he attempted to contact the Claimant. The dates of the actions indicate that the initial investigation motivated Claimant to take the laudable step to improve himself.

Absentia hearings are the least satisfactory method of ascertaining facts concerning violations. Usually the case against a Claimant will go unrebutted because his representative will not be aware of any mitigating facts. However, the Carrier has a need and a right to get on with its business. It had once deferred the investigation and was being asked again to do so because it had received a letter from the Claimant stating that he was entering the hospital.

If Claimant had notified the Investigating Officer concerning the facts that he obviously had knowledge of, the Investigating Officer would have been under a duty to check those facts and upon discovering the truth would have held the hearing with a high risk of reversal. But to place a duty on Investigating Officers to accept at face value every unverified self serving statement from an Investigatee would leave the timing on an investigation in the hands of the Investigatee. No contractual right allows the Investigatee to determine such timing.

*There is no claim that the evidence concerning absence would have been any different if the Claimant had appeared. If, as seems likely, his attendance problems were alcohol related, such a reason is not a valid excuse for missing work.*

*Claimant had a history of being disciplined in 1981 for being either absent and/or late. The thirty day suspension was lessened by the Carrier to a twelve working day suspension. This Board does not find this arbitrary or capricious.*

*We hold that under the facts as known by the Investigating Officer at the time of the investigation, he had a right to continue the hearing in absentia.*

A W A R D

*Claim denied.*

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
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Nancy J. Dever - Executive Secretary

*Dated at Chicago, Illinois, this 7th day of August 1985.*