

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

(International Association of Machinists and Aerospace  
( Workers  
Parties to Dispute: (  
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) violated Rule 24 but not limited thereto of the Controlling Agreement when they dismissed Machinist C. Fields account of alleged violation of Carrier Rules "I", "K", "L" and "P". Claim is made to restore Claimant to service and compensate him for all lost pay up to the time of restoration to service at the prevailing Machinist's rate of pay.

2. That Machinist C. Fields be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost in this period and otherwise made whole for all losses 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant in this case was employed by Carrier on January 14, 1976. The record is not clear as to whether or not he was employed as a Machinist, but he had, at any rate, attained that status at the time the incident or incidents occurred over which this case pertains. Claimant had been on a furlough status prior to February 10, 1984. He was recalled to service, worked two days and since then has not appeared on the job. Claimant's Supervisor called his house on February 10, but received no answer; he called again the

next day; Claimant did answer and advised he was ill. He also advised that he was being treated by Dr. Stanley R. Coston, who later advised that Claimant had recently become his patient.

Carrier states (and names the dates) that Claimant's Supervisor made many calls to Claimant's house and got through to him only once, at which time he said he was sick.

On information received from other employees Carrier had reason to believe that Claimant was employed by the Chicago Housing Authority; upon contacting them Carrier confirmed that Claimant had been employed there as a Utility Janitor since January 9, 1984.

On March 13, 1984, Carrier sent the following Notice to the Claimant:

"You are hereby directed to appear for a formal investigation in connection with the charges listed below:

"Your responsibility for your alleged failure to comply with that portion of the National Railroad Passenger Corporation Rule of Conduct 'I', 'K', 'L' and 'P' and Rule 21 (b) of the scheduled agreement; in that you have absented yourself from your duties from February 27 through March 13, 1984, without seeking proper authority. Additionally, from February 10 through March 13, 1984 you have engaged in other employment while absent from your assigned duties."

Claimant was also advised of the time and place of the Investigation and that he could be accompanied by witnesses and a Representative. Copy was also sent his Union Representative.

On date of Investigation (March 21) neither the Claimant nor his Representative appeared, and it was recessed until March 29; again both the Claimant and his Representative were notified, but neither appeared. It was rescheduled to resume on April 10, and again both Claimant and his Representative were notified. Meanwhile on March 27 Claimant telephoned Carrier and said he wanted to resign. The next day he called again and again said he wanted to resign. Carrier was agreeable and so informed Claimant, however, no resignation letter was received by Carrier. Neither the Claimant nor his Representative appeared at the rescheduled Investigation after which Carrier held the Investigation without Claimant or his Representative and later advised Claimant in writing that he had been dismissed from the service of the Carrier effective April 24, 1986.

By letter dated May 6, 1985 Carrier's Director of Labor Relations reduced Claimant's dismissal to a suspension covering the period of April 24, 1984 through May 24, 1985, the date on which Claimant returned to work.

In their Submissions to this Board, both parties make claims of procedural errors on the part of the other party during the handling of the Claim to this Board, however, the evidence of Claimant's neglect of duty and the fact of his continual ignoring the rules is so clear and of such a nature that this Board must deny this Claim on its merits. Therefore there is no reason to rule on alleged procedural defects.

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 1st day of October 1986.