

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation (Conrail))

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) has unjustly dismissed Electrician A. Catello from service effective March 29, 1985.

2. That accordingly the Carrier be ordered to restore Electrician A. Catello to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge 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 in this case is an Electrician employed by the Carrier at Carrier's Selkirk Diesel Terminal facility at Selkirk, New York. On date of

February 4, 1985, the Carrier sent the Claimant the following Notice:

"You are to attend a Trial at Selkirk Diesel Terminal, Selkirk, New York, on date of February 15, 1985 at 8:00 AM in connection with the following:

To develop the facts and determine your responsibility, if any, in connection with your failure to complete your tour of duty on January 19, January 21, January 25, January 26, January 27, January 28, and for your failure to report for work on January 20, 1985, as per attached CT-89, Daily Attendance Record. In view of your previous attendance record, this constitutes excessive absenteeism.

You may arrange to be accompanied by a representative as provided in you collective bargaining agreement. You may produce witnesses on your behalf, without expense to the Company, and you or your representative may cross examine witnesses.

Copy of this Notice was also sent to Claimant's Union Representative.

At the request of the Union Representative the Trial was postponed and set for March 8, 1985 at 8:00 A.M. Copy of this Notice of Postponement was sent by Certified Mail to the Claimant.

The Trial was held on March 8, 1985, the Claimant did not appear, however, two Union Representatives did appear. On Page 1 of Transcript of the Trial we note the following:

"Hearing Officer questions Carrier witness Alice McCabe:

Q. Mrs. McCabe, was Mr. Catello notified to attend this trial by letter sent to his last known address certified mail #P444 119 937 with return receipt requested on February 15, 1985?

A. Yes sir. The letter was mailed from the Hannacroix Post Office on February 15, was addressed to Mr. A. Catello, P.O. Box 143, 55 Van Buren Avenue, Ravena, N.Y. 12143. That is the address on file that Mr. Catello gave us. The post office notified Mr. Catello on February 16, February 21 and March 3, that he had a certified letter, return receipt requested, at the post office. The envelope was subsequently returned to us as unclaimed."

At this time the Claimant's Representative made a vigorous protest over continuing the Trial which included the following:

" 'It is particularly unfair to the employee and to this Organization to proceed with a trial in absentia while the employee is serving a given period of time of discipline which case is incidentally being adjudicated and we are waiting decisions on the Carrier."

" 'There is no way this organization can intelligently defend an employee when that employee is not present. We have no way of refuting testimony or evidence that the Carrier may choose to enter. We therefore would ask for at this time for an adjournment of this hearing until such time as Mr. Catello is scheduled to return to work."

The Hearing Officer stated that the objection would be noted and made a part of the record, but since three attempts had been made to contact the Claimant the Trial would continue. The Representatives made several more objections but the Trial did continue.

We also note the following Transcript testimony, on Page 3 Hearing Officer again questions Witness McCabe:

* * * *

"Q. Mrs. McCabe, were you employed as Chief Clerk at the Selkirk Diesel Terminal on January 19, January 20, January 21,25,26,27 and 28, 1985?

A. Yes sir I was.

Q. Mrs. McCabe, what is Mr. Catello's tour of duty?

A. He owns a job on the 4 to 12 shift as an Electrician.

Q. Mrs. McCabe, did Mr. Catello work at the Selkirk Diesel Terminal on January 20, 1985?

A. No he did not.

Q. Mrs. McCabe, why did Mr. Catello fail to report to work on January 20, 1985 at the Selkirk Diesel Terminal?

A. He left a message on the mark off machine that he had a head ache.

Q. Mrs. McCabe, did Mr. Catello complete his tour of duty on January 19, January 21, January 25, January 26, January 27, and January 28, 1985?

A. No he did not on January 19. He worked from 4PM to 11PM. On January 21 he worked from 4:30PM to 11:30PM. January 25 he worked from 4PM to 10:30PM. January 26 he worked from 4PM to 11 o'clock. January 27 he worked from 4PM to 11 o'clock and on January 28 he worked from 4PM to 11 o'clock.

Q. Mrs. McCabe, do you have evidence attesting to this fact?

A. Yes sir. I have a photocopy of his daily time card that indicates the hours worked."

* * * *

And on Page 4.

* * * *

"Q. Mrs. McCabe, for the dates where no notation has been made is there any other probable cause which would explain Mr. Catello's failure to complete his tour of duty?

A. Possibly. Mr. Catello previously had given us a memorandum addressed to him from the Brookwood Center in which it indicates that he would possibly be furloughed from another position that he works for the State of New York. Mr. Catello had given us this memorandum in the past and indicated that he did hold another job outside of Conrail. On February 6 I telephoned the Brookwood Center in Claverack, New York to inquire about the employment of Mr. Catello. They informed me that he works there Midnight to 8, 40 hours a week. His rest days are on a rotating basis so he does not have the same days off every week.

* * * *

At this point Claimant's Representative strongly objects to having these statements entered into the record, Hearing Officer over rules him.

On Page 5:

* * * *

"Q. Mrs. McCabe, in relationship to Selkirk Diesel Terminal could you please state where the approximate location of Claverack, New York is?"

"I object These are just suppositions and personal judgments. If you want a map that's one thing. That indicates mileage but we cannot accept at this time that Claverack has any bearing on this case."

"Mr. Wheeler, I do believe the location of Claverack does have a bearing on this case for if Mr. Catello works at the Selkirk Diesel Terminal from 4PM to 12PM and likewise works at the Brookwood Center in Claverack, New York, on a 12 to 8 shift the location is important because driving time would have to be taken into account between the 2 locations. That is why I'm just asking Mrs. McCabe for an approximate location of Claverack, New York in regard to the location of the Selkirk Diesel Terminal."

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On Page 6:

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"A. Claverack is on the other side of the River approximately 20 miles south."

Also on Page 6 Claimant's Representative questions witness McCabe:

"Q. Mrs. McCabe, are you aware of information supplied by Mr. Catello in regard to his medical situation?"

A. I am aware that in the past he has had several medical problems. I'm not sure what you are referring to at this time.

Q. Could you confirm that the Carrier has requested Mr. Catello attend a physical examination?

A. Yes.

Q. And are you aware that Mr. Catello has supplied evidence as to his treatment regarding his medical situation?

A. Again I am aware that Mr. Catello has in the past had several problems. I'm not exactly sure to which one you are referring."

* * * *

All of the Claimant's absence in this case were between 11 P.M. and Midnight. The Employes contend that this was account his medical problems, however, it is rather difficult to believe that he would consistently become sick at that time and almost never at any other time.

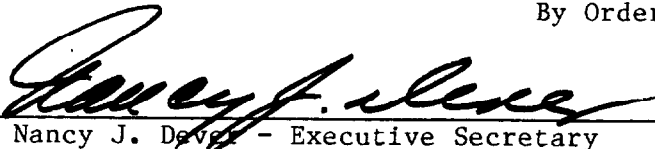
The Carrier shows evidence that Claimant is working another position at another city in addition to his job at the Selkirk Terminal wherein he works 4 P.M. to Midnight and on the other job Midnight to 8 A.M. There is approximately 20 miles distance between the two jobs. Driving time would account for the continual absences between 11 P.M. and Midnight.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.