

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Terminal Railroad Association of St. Louis)

Dispute: Claim of Employes:

1. That the Terminal Railroad Association of St. Louis violated Rule 32 of the April 1, 1945 controlling agreement when it unjustly and improperly cited Electrician B. R. Odom under date of August 31, 1984 for improper investigation which was held October 2, 1984 and further unjustly dealt with him by assessing discipline of dismissal under date of October 8, 1984.

2. That accordingly, the Terminal Railroad Association of St. Louis be ordered to immediately return Electrician B. R. Odom to service compensating him from the date of August 31, 1984 and continuous as follows: (a) for all time lost until returned to service; (b) returned to service with seniority rights unimpaired; (c) made whole for all vacation rights unimpaired; (d) made whole for pension benefits including Railroad Retirement and Unemployment Insurance; (e) made whole for actual loss of payment for all health and welfare and insurance benefits on his dependents and himself; (f) made whole for any other benefits that he would have earned during the time withheld from service; (g) paid an additional 6% per annum compounded annually on the anniversary date of said claim; and, further, any record of this investigation and disciplinary action be removed from his personal record file.

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.

Docket No. 11155 and Docket No. 11156 are companion cases arising out of the same transactional facts.

The operational facts occurred within a relatively short time frame. Essentially, Claimant, an Electrician with Craft seniority of approximately 13 years, caused to be served upon the Carrier on August 28, 1984, a Complaint at Law with Summons alleging personal injury and seeking money damages. The injury complained of was a loss of hearing allegedly caused by continuous exposure to excessive noise in the work place.

On August 29, 1984, the Carrier removed the Claimant from service, and directed Claimant to obtain an audiogram, at Carrier's expense, at a local Clinic. Carrier's letter indicates that Claimant would be suspended from his duties until the Carrier received a favorable report from the Clinic.

On August 30, 1984, the Carrier issued a charge letter to the Claimant alleging Claimant's violation of General Rules 1110, 1107, General Safety Rule F, and Basic Rule 1, all of which related to the responsibilities of Carrier's employees relative to sustaining personal injuries on the property and reporting unsafe working conditions. The record in this regard is clear that no report of any kind had been submitted by the Claimant concerning a loss of hearing in 1982 or thereafter until receipt of the Complaint served on the Carrier on August 28, 1984. This Board has consistently held that the failure of an individual to report an injury subjects the individual to discipline, see Third Division Awards 23484, 24031.


The Board has made a careful review of the record and finds that since Award No. 11199 upholds the disciplinary action implemented by the Carrier, the disposition of this case is rendered moot. Accordingly, the Claim is denied for the reasons given herein.

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 4th day of March 1987.