

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(Moses Marks

PARTIES TO DISPUTE: (

(Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

1. That the ICG Railroad violated the current agreement, in particular Rule 37.A.1., when it improperly and unjustly dismissed from service Electrician Moses Marks, subsequent to a formal investigation conducted on May 13, 1986.

2. That the ICG Railroad further violated Rule 37.A.1., when it failed to afford Mr. Marks a fair and impartial hearing, as mandated by the agreement, by proceeding with the formal investigation in the absence of a key and vital witness; therefore, denying Mr. Marks the right to face his accuser and preventing cross-examination and questioning of an essential witness.

3. That the ICG Railroad violated the provision of Rule 37.A.2., when on March 20, 1986, Mr. Marks was arbitrarily removed from service by the General Foreman, based on the allegations of a Mechanical Foreman and absent any indication or confirmation of any of the circumstances outlined in this instant rule.

4. That the unjust dismissal of Mr. Marks was based on the biased and prejudicial testimony of company witnesses, and the facts involved in the incident and charges under investigation did not warrant the determination of guilt. That the transcript of testimony given at the formal investigation, and attached to the dismissal notice of May 30, 1986, is not a true and accurate account of the hearing.

5. That Mr. Marks be returned to service with all seniority, benefits, and rights unimpaired, and that he be made whole for all wage loss incurred, commencing on March 20, 1986, until such date as he is returned to service.

6. That Mr. Marks' personal record be cleared of all references to the charges and formal investigation of May 13, 1986.

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 employees 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 were given due notice of hearing thereon.

The record before the Board is clear that the Claimant is attempting to assert before the Board was not handled on the property in accordance with the requirements of Sections 152, Second and 153, First (i) of the Railway Labor Act as required by Circular No. 1 of the National Railroad Adjustment Board before the Claimant filed his September 10, 1986 Notice of Intent with the Board.

Suffice to say that under Section 152, Second, it is mandatory that all disputes must be considered, and, if possible, decided, with all expedition, in conference between the parties on the property. Such a conference is a prerequisite to any case being referred to this Board. The purpose of this section of the Act was to encourage settlement of disputes between the parties, rather than "automatic" referrals of disputes to the Board.


The record of this case indicates that no conference relative to this Claim was held on the property prior to its submission to this Board. For this reason we have no alternative but to dismiss the Claim based on this procedural flaw.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1988.