

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Union Pacific Railroad Company
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company is violative of Rule 32 of the June 1, 1960 controlling agreement and has dealt unjustly with and damaged Electrician R. E. Burge at Kansas City, Missouri/Kansas when they denied him a fair and impartial investigation, resulting in the unjust and improper discipline of dismissal from service by letter dated January 29, 1988.

2. That the Missouri Pacific Railroad Company is violative of Rule 32 of the June 1, 1960 controlling agreement when they failed to furnish a copy of each statement made a matter of record at the investigation (transcript) to Electrician R. E. Burge and the Local Committee.

3. That the Missouri Pacific Railroad Company is violative of Rule 31(a) of the June 1, 1960 controlling agreement when they failed to give forth their reasons for their denial of the initial appeal and claim, and further violated Rule 31(a) when they did not allow the claim as presented as prescribed in said Rule.

4. That, accordingly, the Missouri Pacific Railroad Company be ordered to reinstate Electrician R. E. Burge to service with all contractual rights concerning seniority, health and welfare benefits, vacations, etcetera, and that he be compensated for all wage loss commencing with January 30, 1988 at the straight time rate, eight (8) hours per day, five (5) days per week up to and including such time as he is reinstated to service, and, that his record be cleared of this discipline of dismissal.

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.

The Claimant was dismissed from the Carrier's service on January 29, 1988, as the result of a formal Investigation held on that same day. He was charged with failure to return from a leave of absence. The Board has reviewed the contention of the Organization as they apply to procedural errors made by the Carrier. The Board finds that the Carrier did not violate any of the requirements of Rule 32. The Carrier established that it sent the notice of Investigation to the Claimant's last known address. Rule 32 does not require the Carrier to assure that the Claimant receives notice. The Carrier acted reasonably and responsibly in furnishing notice to the Claimant. The fact that the Claimant did not appear at the Hearing did not mandate that the Hearing Officer grant the Organization a postponement. The Board basis this determination on its finding above, that the Carrier acted reasonably and responsibly in providing the Claimant notice. Further, no allegation of failure to provide proper notice was made by the Organization at the Hearing. Its request for a postponement was based solely on the fact that Claimant was not present. This is insufficient cause for a postponement considering the Carrier's compliance with Rule 32. Further, the Claimant's failure to appear does not deprive him or the Organization of appeal rights, which were duly exercised. The Board has also considered the Organization's allegation that the Carrier violated Rule 32 by failing to provide it and the Claimant with a copy of the transcript. Rule 32 does not provide the precise method of furnishing "each statement made as a matter of record." The transcript and other documents were available to the Organization on the property; there is no evidence that it was denied access.

The Board does find, however, that the Organization makes a compelling argument regarding the Carrier's violation of Rule 31(a). Rule 31(a) states clearly and unequivocally that:

"...Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented...."

The record establishes that the Carrier Officer in the first level of appeal simply denied the appeal without "reasons for such disallowance."

This Board has ruled on previous occasions on rules such as Rule 31(a). Second Division Award 3312 concluded:

"In view of the clear mandate of this provision we have no alternative but to sustain the claim."

Likewise in Second Division Award 9930, the Board stated:

"The parties have bargained precise time limits in claims handling applicable to both the organization and the carrier. This Board has no authority to bend or relax those requirements."

Therefore, Claimant shall be reinstated with his seniority and other rights unimpaired. In regards to backpay, this Board finds no evidence in the record indicating when the Claimant would have returned to duty. Accordingly, the portion of the claim for wage loss is denied.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1990.