

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Central of Georgia Railway Company

STATEMENT OF CLAIM:

1. That the Central of Georgia Railway Company violated the controlling Agreement, particularly Rule 10, when they unjustly dismissed Communications Maintainer R. L. Farmer from service on July 27, 1989.

2. That accordingly, the Central of Georgia Railway Company be ordered to reinstate Communications Maintainer R. L. Farmer to service with all rights and benefits unimpaired and compensated for all monetary losses sustained account of the unjustly dismissal in violation of the Agreement.

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 service on July 27, 1989, as a result of an Investigation conducted on July 10, 1989. The dismissal resulted from the Carrier's contention that the Claimant had failed to protect his assigned territory. The Claimant was in service with the Carrier for 17 1/2 years.

The Organization argued the Claimant was not afforded a full, fair and impartial Hearing to which he is entitled under Article 10 of the controlling Agreement. The investigating Carrier Officer was prejudiced against the Claimant and showed this prejudice by continually interrupting witnesses, leading their testimony, and disallowing the General Chairman leave to ask appropriate questions. It is the Organization's conclusion that the Investigation was a one-sided affair and the Organization cited numerous examples of this alleged prejudice. Several Awards were cited on behalf of the Organization's position.

With respect to the merits of the case, it is the Organization's position that the Claimant had acted in the best interest of the Carrier and that he felt it was unsafe for him to operate a Company vehicle. There was no emergency, as the Carrier alleged in this case and as it has been defined and recognized in the railroad industry, and Awards were cited to back this contention. It is the Organization's position that the Claimant did not receive precise charges nor a fair and impartial Investigation, and in any event, the merits of the Carrier's case are flawed since no train delays or additional expenses were incurred and no emergency existed. Therefore, the Claimant did not violate any of the Rules of the Carrier. The Organization asked that the Claimant be reinstated in accordance with his Claim.

It is the Carrier's position that an emergency situation existed on April 28, 1989, in that a stand alone detector at its Sand Hill, Georgia M.P.O-9.1 was out of order. This detector was in the Claimant's territory. The Carrier attempted to call the Claimant and beep him four times between 9:05 P.M. and 2:00 A.M. The Carrier was unsuccessful in these attempts to contact the Claimant to perform his assigned emergency service. At 2:00 A.M. the Claimant answered his phone and told the Carrier that he did not have his beeper with him at the bowling alley and that he would respond to the call and call the Supervisor at daybreak. At 3:10 A.M. the Claimant telephoned the Carrier and told him that he would be unable to take the call. An Investigation was held and the Claimant was dismissed from service effective July 27, 1989. The Claimant has had eight disciplinary instances in his file including five suspensions, one of which was for failure to protect his territory. It is the Carrier's position that it proved the Claimant was guilty and cited numerous Awards bolstering its position. The Carrier also claimed that its discipline was fully warranted and should not be disturbed. Considering the seriousness of the charges against the Claimant and the previous warnings and disciplinary actions, it is clear that the Claimant has not favorably responded to the Carrier's efforts to improve his performance. Therefore, it is the Carrier's position that the Claim be denied and the dismissal of this Claimant be upheld in full.

Upon complete review of the evidence, the Board finds the procedural objections raised by the Organization were not proven. Regarding the merits, the Carrier has proven the essential elements of its case. The Claimant has seriously neglected his duties without reasonable excuse. His previous service record is extremely poor. However, when considering the appropriateness of dismissal in this case, the Board finds that this Claimant is making at least some effort to improve his situation so that he can become a fully functional employee of the Carrier. Therefore, the Board will find that dismissal is inappropriate under the very narrow circumstances of this case and will order the Carrier to give the Claimant the opportunity to return to his job with seniority rights unimpaired and on a last chance basis, but without any compensation for time lost. The Claimant is specifically cautioned that this is a last chance opportunity and that any proven violations of the Carrier's Rules may result in his immediate dismissal. The Board will further order that the Claimant submit to a physical examination in accordance with the Rules prior to returning to service to show that he is fit and able to perform the duties of his position.

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Award No. 12108
Docket No. 12045
91-2-90-2-269

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1991.