

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12591
Docket No. 12558
93-2-92-2-81

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"DISPUTE AND CLAIM OF EMPLOYEES:

- (1) That the Norfolk and Western Railway Company, violated the controlling Agreement between the Norfolk and Western Railway Company and its Employees, represented by the International Association of Machinists and Aerospace Workers effected (sic) May 15, 1983 but not limited thereto, when they unjustly dismissed Machinists G. C. Smith, Moberly, Missouri, from the service of the Carrier.
- (2) That accordingly, Carrier by ordered to return Machinists G. C. Smith, to active service with all rights unimpaired and pay him for all lost time wages for the period from May 22, 1991 until he is returned to service."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Subsequent to an investigation held in absentia, the Carrier found that the Claimant falsified an injury. This resulted in his dismissal from the service.

The Board has carefully reviewed the lengthy record developed in this case and concludes after this review that the Carrier has met its burden of proof.

The Claimant did not appear at the investigation (which was postponed a number of times) although he had sufficient advance notice that it again had been rescheduled. The Board does not favor hearings held in absentia. However, we find that the Claimant did not appear at the hearing by his own choice. His failure to appear was at his own peril. The Board also finds that the Claimant was well-represented throughout the proceedings by the Organization and that these proceedings were conducted in a fair and proper manner.

With respect to the substance of this claim, the evidence shows that the Claimant made false statements relative to an alleged personal injury on July 30, 1988. The charges, as in this case, go to the basic matter of trust between the employer and employee and, normally, if proven (as here) will lead to dismissal from the service. We find no basis to disturb the discipline assessed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.