

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12610
Docket No. 12519
93-2-92-2-42

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
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

1. That the Chicago & North Western Transportation Company on October 30, 1990 violated the provisions of Rule 35 of the July 1, 1921 Joint Agreement, as subsequently amended July 1, 1979, when without benefit of a fair and impartial investigation it improperly dismissed from service Proviso Diesel Shop Machinists James Aldrich.
2. That accordingly the Carrier be ordered to
 - (a) Immediately reinstate Claimant as an employee
 - (b) Restore unto Claimant his seniority and vacation rights."

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 employe 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.

On August 21, 1990, the Carrier notified the Claimant that he was medically disqualified for failure to adhere to employment

conditions prescribed by the Carrier's Medical Department at the time when he was reinstated to duty in June 1990.

Subsequently, the Carrier wrote to the Claimant on three different occasions (September 6, 25 and October 11, 1990) to request that he provide completed Leave of Absence Forms. The record also shows that Carrier's officials "on numerous occasions" attempted to contact the Claimant and to provide assistance, but to no avail.

The Organization mainly asserts that the Claimant was medically disqualified and that the Carrier failed to provide due process to the Claimant. It submits that the Carrier was required to conference the matter at issue pursuant to Rule 35 of the Agreement and that the Claimant's seniority could not be unilaterally terminated (in effect, disciplined) without a fair and impartial hearing.

We find for the Carrier in this matter. The Claimant could have easily resolved the problem by responding in some manner to one of the Carrier's numerous attempts to contact him. While we understand the Organization's position in this matter, the controlling issue is whether the Carrier could properly request a Leave of Absence Form from the Claimant and, if he failed to respond, whether his failure could form a legitimate basis for termination of his seniority. Numerous Awards, when addressing the same issue as herein, have held the failure to obtain a Leave of Absence terminates employment. (Second Division Awards 8894, and 11780, to note only two of many.)

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 17th day of November 1993.