

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12925  
Docket No. 12851  
95-2-93-2-227

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical  
( Workers, AFL-CIO System Council No. 2  
(  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That the Union Pacific Railroad Company violated the current agreement, in particular Rule No. 37, when Electrician C. H. Cummings was unjustly dismissed from service on the date of July 28, 1992, at Salt Lake City, Utah.
2. That accordingly the Union Pacific Railroad Company be ordered to compensate Mr. C. H. Cummings as follows:
  - (a) That Claimant should be returned to service of the Carrier with all rights unimpaired.
  - (b) That Claimant should be compensated for each work day lost from the date he was dismissed to the date he is returned to service, including any overtime that would have been available during this period.
  - (c) That all agreement rights be restored, including insurance premiums."

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.

Claimant was first employed by the Carrier on March 8, 1978. At the time of the occurrences giving rise to this dispute, he was employed as an electrician in Carrier's facility at Salt Lake City, Utah.

On July 8, 1992, Carrier issued to Claimant Notice of Investigation reading:

"Dear Mr. Cummings:

Please report to the office of Manager of Shop Operations at the Salt Lake City Diesel Shop at 8 a.m. on Friday, July 17, 1992, for formal investigation and hearing to develop the facts and determine your responsibility, if any, on charges of excessive absenteeism and tardiness for your assignment ten (10) times between April 20, 1992, and July 5, 1992, as indicated below:

4/20/92	15 minutes	5/31/92	15 minutes	6/29/92	4 hours
5/17/92	15 minutes	6/07/92	8 hours	7/05/92	8 hours
5/18/92	20 minutes	6/09/92	8 hours		
5/26/92	5 hours	6/21/92	10 minutes		

These charges indicate violations of General Rules B, 604, and 607(3) of Form 7908, 'Safety, Radio, and General Rules for all Employees.'

This investigation and hearing will be conducted in accordance with Rule 37 of the current Schedule Agreement and you are entitled to representation as provided therein.

You may produce such witnesses as you desire at your own expense.

Yours truly,

B. T. McMahon  
Mgr. Shop Operations"

Investigation was rescheduled and held on July 22, 1992. On July 28, 1992, Carrier advised Claimant that the charges had been sustained and that he was in violation of Rule 604 of Form 6908, Safety, Radio and General Rules for all Employees, reading:

"Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority."

Carrier also notified Claimant that after considering his prior record of discipline and counseling with the finding of guilt on the current charges, he was dismissed from the service.

The Organization appealed Claimant's dismissal in accordance with terms of the controlling agreement but failed to obtain satisfactory resolution with its on-property handling. It now appeals its claim to this Board for adjudication.

This Board has studied the transcript of the Investigation and concluded that Carrier sustained its charges of excessive absenteeism and tardiness and violation of Rule 604 of Form 7908, Safety, Radio, and General Rules for all Employees.

Study of the transcript also persuades this Board that Claimant was granted a fair and impartial hearing. He was given due notice of the charges, and afforded reasonable opportunity to prepare a defense and arrange for witnesses on his behalf. Claimant was present at the Investigation with representatives of his choice. Both were permitted to participate in the Investigation, make statements, present witnesses and cross-examine witnesses.

There is no merit to the Organization's argument that the Investigation was unfair because the Carrier Officer signing the Notice of Investigation was not present at the Investigation. We say this for the reason that the record fails to reveal that said officer could have presented anything of value to Claimant's defense. Further, witnesses presented by the Carrier testified from first-hand knowledge of the occurrences giving rise to the charges.

The Board is not persuaded that Carrier's failure to produce time cards for April 20 and July 5, 1992, somehow disadvantaged the Claimant and made the Investigation other than fair and impartial. This is so because Claimant conceded that he was 15 minutes tardy on April 20, 1992, which is exactly what he was charged with. As to July 5, 1992, Claimant acknowledged he had permission to be late and come in at 7:00 PM; however, he did not show up until 9:30 PM. Carrier had filled his position and refused permission for him to go to work at 9:30 PM, only 1 1/2 hours prior to quitting time.

The Organization's argument that Rule 604, Form 7908, Safety, Radio and General Rules for all Employees, is not a negotiated rule and therefore can have no application to Claimant is without foundation. Common sense teaches that Carrier retains the right to promulgate rules for the efficient operation of its business that do not contravene the provisions of the negotiated agreement. We have not been shown where Rule 604 contravenes any part of the Organization's agreement. Neither can we find any contravention.

The Board has also noted the argument that Claimant's absences and tardiness were authorized and thus could not be considered excessive. We disagree. Authorized absence and tardiness can and do become excessive and cannot be tolerated. PLB 5082, Award No. 5, held in pertinent part:

"There is a misperception as to both the employees' obligation and the Organization's obligation. The Employees have a contractual obligation to furnish sufficient employees to consistently and properly protect the requirements of the Carrier's services. The employee, pursuant to his implied employment contract, has an obligation to protect the requirements of Carrier's service. They, as common sense indicates, are the basic obligations. The employment relationship, among other things, dictates that the employee needs permission at all times to be absent from his obligation to protect the requirements of his employer's service. The fact that permission is granted in response to such request to be off does not, per se, stop the employer from later questioning whether such employee requests have been excessive or even abusive."

This Board concludes that Claimant was granted all due process rights of the agreement and that the charges were sustained with reasonably substantial evidence. Further, that Claimant acknowledged his absence or tardiness on each date contained in the charge.

The Board finds no justifiable reason to interfere with the discipline assessed by the Carrier.

The Board notes the procedural argument on time limits raised by the Carrier. However, in view of our disposition of the claim, we do not deem it necessary to rule on the procedural issue.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.