

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13217
Docket No. 13085
98-2-95-2-108**

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Dispute - Claim of Employee

(1) That Consolidated Rail Corporation arbitrarily and capriciously dismissed Machinist T. F. Brandt following trial held on June 15, 1994.

(2) That accordingly, Machinist T. F. Brandt should be immediately restored to service, paid for all lost time, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust discipline been imposed, and have his record cleared of any reference to the charges."

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 were given due notice of hearing thereon.

By letter dated May 25, 1994 Claimant, a Machinist at Carrier's Altoona-Juniata Locomotive Shop, was instructed to appear for trial on charges of insubordination in failing to comply with a Superintendent's directive to report for work and take a return to duty physical or furnish medical documentation why he could not perform Machinist duties; absence without permission from April 25 through May 24, 1994 and using disability as a subterfuge to avoid work during those dates. As a result of a trial held in absentia on June 28, 1994, Claimant was found guilty of all charges and dismissed from service. This claim protests such discipline.

The transcript of the trial reveals that Claimant was off on disability leave since January 16, 1991. Carrier's records reveal a medical status report dated December 9, 1991 indicating that Claimant was still unable to cope with stress, had serious difficulties relating to authority and it was undetermined when he could return to work. The last medical status report found on Claimant was a form dated February 21, 1992 indicating that Claimant was no longer under the doctor's care due to his incarceration.

In discovering that no update on Claimant's condition had been forthcoming for over two years, Superintendent Baranko sent Claimant a certified letter dated May 6, 1994 directing him to report for work within ten days of receipt of the letter or furnish medical documentation that he was unable to perform his job. The certified receipt for this letter indicates that it was signed for by a M.G. Brandt on May 14, 1994.

When it heard nothing further, Carrier sent Claimant a notice of trial dated May 25, 1994 requesting him to attend a trial on June 15, 1994 on charges of insubordination, absence without permission and using disability as a subterfuge to avoid work. The certified receipt for such document was signed by T.F. Brandt on May 27, 1994.

When the trial commenced on June 15, 1994, Claimant had not been heard from by either Carrier or the Organization, despite attempts to reach him at his last known address. The Organization requested a recess in an effort to further attempt to contact Claimant. A recess was granted and Carrier notified Claimant that the trial would resume on June 28, 1994 even in his absence. A certified receipt for such notice was signed by John T. Brandt on June 20, 1994.

The trial resumed on June 28, 1994, and proceeded in Claimant's absence, over the objection of the Organization. Again the parties verified that they had attempted to notify Claimant but had received no contact from him. The Notice of Discipline was issued on July 11, 1994 dismissing Claimant in all capacities, based upon the evidence adduced at the Hearing and his prior record.

Carrier argues that it properly held the Hearing in absentia after making all necessary efforts to contact Claimant, relying upon Public Law Board No. 2720, Award 89; Second Division Awards 12452, 12624; Third Division Awards 24945, 31627. Carrier notes that it was reasonable for it to require updated medical information from an employee who was on such lengthy disability leave without providing continuing medical data. It contends that the evidence supports the charges and proves that Claimant abandoned his job, citing Special Board of Adjustment No. 1059, Award 48; Public Law Board No. 4410, Awards 173, 206; Special Board of Adjustment No. 969, Awards 165, 208.

The Organization argues that Carrier violated Claimant's due process rights by holding the Hearing in absentia, thereby denying him the right to confront witnesses against him, and by relying upon hearsay evidence to support the charges. The Organization contends that Carrier failed to sustain its burden of proving the charges against Claimant, and failed to show that he was properly notified of his obligation to report to work or provide updated medical information. It relies on Third Division Award 2614 and First Division Award 20074 in arguing that the discipline should be overturned.

A careful review of the record convinces the Board that there exists substantial evidence to support Carrier's action in holding the Hearing in absentia on June 28, 1994. The record reveals that all reasonable efforts were made by both parties to contact Claimant and to provide him with an opportunity to be present at the trial. The Organization had a representative present and did what it could to preserve Claimant's rights, and Carrier granted an initial request for a recess on June 15, 1994 in an effort to provide further time for notice to be served. Under such circumstances, we find nothing improper in Carrier conducting the trial in absentia and relying upon the evidence adduced therein. See Second Division Awards 12452, 7844, 8225.

The record developed at the June 28, 1994 Hearing supports Carrier's determination that Claimant received notice of his responsibility to report for work or

provide medical documentation, and failed to do so within the designated time limits. There is also substantial evidence that Claimant was guilty of the charges for which he was dismissed, and we find that the record supports the conclusion that Claimant abandoned his position by failing to comply with the directives issued to him. See Special Board of Adjustment No. 1059, Award 48; Special Board of Adjustment No. 969, Award 165. Therefore, we uphold Carrier's action in dismissing him in all capacities.

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 26th day of February 1998.