

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13562

Docket No. 13463

00-2-99-2-62

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

(International Brotherhood of Electrical Workers
(System Council No. 16)

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway Company (former
(Burlington Northern Railroad)

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rule 30 in particular, System Electrician Larry R. Roblyer was unjustly dismissed by the Burlington/Santa Fe Railroad Company following an investigation held on November 18, 1997;
2. That the investigation held on November 18, 1997 was not a fair and impartial investigation under the terms required by the Rules of the current Agreement, and that the supreme penalty of dismissal was unjust, excessive and unwarranted; and
3. That, accordingly, the Burlington Northern/Santa Fe Railroad Company should be directed to make System Electrician Larry R. Roblyer whole by restoring him to its service with seniority rights unimpaired, restore all rights, benefits and privileges due him under the Agreement which were adversely affected by his dismissal and compensate him for all lost wages beginning from the date of his dismissal and continuing until he is restored to service. Claim also includes removal of all reference to the subject disciplinary hearing from Mr. Roblyer’s personal record.”

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.

The Claimant, whose seniority as an Electrician dated to March 1989, was granted a leave of absence from employment effective September 5, 1997 through October 30, 1997 to deal with personal problems. After he failed to return from leave on October 31 as scheduled or extend his leave in writing as required, facility Supervisor Larry Gilmore called the number the Claimant had designated as his pager contact and received a recorded message indicating that service had been disconnected. Having heard that the Claimant was working with the Carrier's Employee Assistance Program, Gilmore called the appropriate EAP representative and learned that the Claimant had not been in contact with him since October 1. Human Resources advised that it had had no communication with the Claimant since his leave commenced.

On November 11, 1997, the Carrier sent a registered letter via Federal Express to the Claimant's address of record directing him to attend an Investigation in Memphis "for the purpose of ascertaining the facts and determining your responsibility in conjunction with your failure to return from leave of absence and protect assignment at Memphis . . . at 0700 on October 31, 1997." Despite five attempts at delivery, the Claimant never signed for or received that notice. Investigation and Hearing was conducted on November 18, 1997, and on December 5, 1997 the Claimant was dismissed for failure to return from leave.

Rule S-28.13 Reporting or Absence reads in pertinent part:

"Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.

Employees must not be absent from duty without proper authority. Except for a scheduled vacation period, authorized absence in excess of ten (10) calendar days must be authorized by formal leave of absence, unless current agreement differs.”

Rule S-28.15 Subject to Call provides as follows:

“Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them.”

Mr. Gilmore testified that he was unaware of any reasons, health-related or otherwise, that would explain why the Claimant had not returned, requested leave extension or kept his telephone and address records updated. The Claimant did not attend his Hearing, and the record does not reflect what circumstances accounted for his absence.

The Organization here contends that the Carrier’s notice was defective as containing no precise charges and was sent to the wrong address despite the fact that the Carrier knew the address it used was incorrect. The Carrier under the circumstances should have made a more vigorous attempt to find out why an eight year employee had failed to return, rather than holding a Hearing in absentia and terminating him.

The Board finds no basis for subverting the Carrier’s judgment. The undisputed facts indicate that the Claimant failed to comply with the instructions given to him by the Company’s Manpower Planning Office at the time he took leave. Instead, he dropped out of sight, did not claim his mail, and was inexplicably unavailable to perform services for the Carrier as required. The facts strongly suggest his whereabouts were unknown as well to his Union representatives. We find the Carrier’s notice to be clear and in conformity with the Rules, its use of his address of record proper, and its efforts to reach him by phone and through internal EAP and Human Resources channels ample and well-documented.

Upon the record evidence, we conclude that the Claimant breached his obligation to report and has failed to support his absence with good and sufficient reasons. In the absence of mitigating circumstances, no modification of the penalty is warranted.

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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 27th day of October, 2000.