Award No. 4433
Docket No. CL-4494

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the rules of Agreement between the Western Pacific Railroad Company and Employes thereof represented by the Brotherhood of Railway Clerks, effective December 16, 1943:

1. When it dismissed John E. Donlon, Timekeeper, Extra Gang No. 7, on November 25, 1947 (Management's letter dated November 25, 1947, Employes' Exhibit 12).

2. That Mr. Donlon be restored to service with seniority rights unimpaired and that he be compensated for wage loss sustained from December 10, 1947 (date he was OK'd for service by Carrier's Medical Department, Employes' Exhibit 6) to the date he is actually restored to active service.

OPINION OF BOARD: On October 22, 1947, Claimant was assigned to the position of Timekeeper on Extra Gang No. 7. On November 14, 1947, Claimant was notified to appear for investigation for failure to be in condition to render efficient and satisfactory service as Timekeeper because of excessive indulgence in intoxicating liquor. On November 16, 1947, Claimant requested a continuance of the investigation to November 22, 1947 and the request was granted. Claimant failed to appear at the investigation on the latter date. The investigation was held, evidence taken and Claimant was discharged from the service of the Carrier. The Organization contends that Claimant did not have a fair and impartial trial in accordance with the requirements of the current agreement and demands that he be reinstated with seniority unimpaired and be compensated for time lost.

Claimant complains about the holding of the investigation in his absence. We find that the action of the Carrier in so doing was in all respects regular. The notice of the investigation was properly served. A continuance was granted as requested by the Claimant. He neither appeared personally or by representative, and failed to communicate with Carrier concerning his failure to appear. His complete indifference to the investigation indicates an intent to ignore it and not contest the charges made. His failure to inquire concerning its result until December 9, 1947, after claiming that he received no notice of Carrier's decision, supports this view.

Claimant attempts to excuse his failure to appear on the ground that he had suffered an injury and was under a doctor's care. There is evidence that

he was consulting company doctors in Portola and Sacramento. The findings of the doctors clearly show that he was not incapacitated for travel or from communicating with the Carrier concerning the investigation. The record discloses no valid reason for his failure to attend the investigation. An accused may not thus defeat the purposes of an investigation.

Claimant was notified on November 25, 1947, by mail, of his discharge from the service. He claims not to have received a notice. Letters were mailed to him at addresses contained in Carrier's records as the rules require. The record does not establish any irregularity on the part of the Carrier in this respect.

Complaint is made of the failure to serve a copy of the transcript of the investigation upon the General Chairman as required by Rule 45, Current Agreement. The investigation was held on November 22, 1947. A copy of the transcript of the investigation was sent to the General Chairman on January 6, 1948. While no time limit for serving such a transcript is fixed by Rule 45, it is contemplated, we think, that it shall be served before the expiration of the time for appeal. This was not done in the case before us. It is the rule that a failure to serve a copy of a transcript of an investigation will nullify the proceeding if such failure prejudiced the rights of the employe charged. Award 3736. Claimant here is in no position to complain. He wilfully refused to attend the investigation, an act which is itself a violation of agreement rules. By his own negligence and indifference, he not only failed to attend the investigation, but he failed to secure a representative or to ask for a continuance on the grounds that he now asserts entitled him to it. He is in no position now to urge that he did not have a fair and impartial trial for the failure to serve a transcript on the General Chairman or for any other reason. He has waived that right by his own disregard of the investigation proceedings.

The evidence conclusively establishes that Claimant abandoned his position during assigned hours and occupied himself in the excessive indulgence of intoxicating liquors. He was found in a tavern during assigned hours engaging in this pastime. The evidence shows that his work had been neglected and his efficiency seriously reduced for a considerable period of time by this improper conduct. The Carrier properly subjected Claimant to discipline and the penalty inflicted is adequately supported by the record. No basis for an affirmative award exists.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.