

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24826  
Docket Number CL-24189

John B. LaRocco, Referee

(Brotherhood of Railway, Airline and Steamship Clerks  
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9489)  
that:

(a) Carrier violated the rules of the current Clerks' Agreement at Los Angeles, California, when it removed Mr. J. Z. Ray from service as a result of a formal investigation held on February 1, 1980, and

(b) Mr. J. Z. Ray shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on or about February 20, 1980, and in addition he shall be paid 10% interest on all wage loss compounded daily.

OPINION OF BOARD: Claimant, a Yard Clerk, called the Assistant Agent at Hobart Yard on January 12, 1980, to mark off his regular position because he was going to protect an extra board yardmaster assignment. A short time later, the Assistant Agent learned from the Head Crew Clerk that the latter had filled the yardmaster position with another employe after he had unsuccessfully tried to contact Claimant. Thus, the Assistant Agent wrote a letter to Claimant asking him to explain why he had marked off his regular January 12, 1980 assignment since he had not worked the yardmaster position. When Claimant did not reply, the Agent sent Claimant another letter demanding an explanation on or before January 25, 1980.

When Claimant failed to respond to the second inquiry, the Carrier sent written notice to Claimant (dated January 30, 1980) informing him that an investigation would be convened on February 1, 1980. The stated purpose of the investigation was to determine if Claimant had misrepresented his excuse for laying off his regular position on January 12, 1980, and if he was subsequently insubordinate. Special Agents tried to personally deliver the investigation notice to Claimant but they were unable to locate him. On both January 30, 1980 and January 31, 1980, Claimant called the Assistant Agent to mark off due to illness. The Assistant Agent read the investigation letter to Claimant over the telephone. The Assistant Agent also asked Claimant where he was so Carrier Special Agents could serve the formal investigation notice. Claimant refused to reveal his whereabouts. The Agent advised Claimant to seek a postponement of the investigation if he needed more time to prepare his defense but Claimant failed to make such a request. Neither Claimant nor his representative appeared at the February 1, 1980 investigation. On February 11, 1980, the Carrier dismissed Claimant from service.

The Organization urges us to summarily sustain this claim because the Carrier allegedly failed to provide Claimant and his representative with written notice of the February 1, 1980 investigation in accord with Rule 24-B. In deciding if Claimant was given sufficient advance notice of the pending investigation, we must carefully examine all the surrounding circumstances on a case by case basis. In this particular case, we conclude that though the time period between the date of the notice and the date of the hearing was short, the Carrier satisfied the minimum requirements of Rule 24-B. Claimant created a situation where it was impossible for the Carrier to serve him with the written notice. First, Claimant was absent from work on January 30 and 31, 1980. Second, when he learned that the Carrier's Special Agent was trying to serve the notice, Claimant intentionally refused to divulge where he could be found. Third, despite receiving oral notification of the pending investigation, Claimant still failed to respond to the letters sent by the Agent and Assistant Agent. Since Claimant deliberately (and effectively) evaded service, he was solely to blame for the lack of written notice. Third Division Awards No. 15375 (Ives); No. 13757 (Coburn); and No. 15007 (Wolf). Moreover, Claimant demonstrated an apathetic attitude toward his job because he failed to either request a postponement or attend the investigation.

On the merits, the Carrier presented substantial evidence proving that Claimant gave a false reason for marking off his Yard Clerk's position on January 12, 1980. Claimant knowingly deceived the Carrier by telling the Assistant Agent he was working a yardmaster assignment when he had made himself unavailable for the assignment. By failing to respond to the letters sent by the Agent and Assistant Agent, Claimant aggravated an already serious offense. The Carrier need not tolerate such flagrant insubordination. In view of Claimant's poor prior record, we find no justification for reducing the assessed penalty.

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;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

That the Agreement was not violated.

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Claim denied.

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By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984