

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Mr. Yusuf Abdur-Rahman was without just and sufficient cause (System Docket CR-1423).

(2) The resignation of Mr. Yusuf Abdur-Rahman was obtained through coercion and duress and it was thereby invalid.

(3) Because of the aforesaid violations, Claimant Yusuf Abdur-Rahman shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant was first employed by the Carrier on September 24, 1979. As a result of charges dated September 2, 1983, hearing ultimately held on September 15, 1983, and by letter dated September 20, 1983, Claimant was dismissed from service for insubordination, providing false information, violation of Safety Rule 3030 on August 18, 1983, and failing to conduct himself so as to avoid personal injury.

By letter dated September 23, 1983, Claimant informed the Carrier in writing as follows:

"Due to the fact that I have found another job I am submitting my resignation.

I appreciate having had the opportunity to work under Conrail."

On November 11, 1983, Claimant signed a Letter of Agreement in connection with the settlement of a personal injury suit against the Carrier which provided as follows:

"In consideration of the settlement made to me this date by the Consolidated Rail Corporation, I hereby agree that I will not present myself for employment or reemployment at anytime in the future by the Consolidated Rail Corporation."

Claimant wrote the Carrier a letter dated March 8, 1985, stating:

"Based on the information I received from Roseanne Amos on October, 1984 that I was dismissed from Conrail September 20, 1983, I applied for unemployment compensation and was approved February 28, 1985. Therefore, based on Rule 26(a) I am filing a grievance because my rights weren't protected under Rule 27 Section 1(a) and Rule 27 Section 1(d)."

This matter was heard before the Division on July 14, 1987. Although notified to attend, Claimant did not appear.

First, Claimant's grievance of March 8, 1985, is untimely and we have no jurisdiction to consider the matter. Claimant was dismissed by letter dated September 20, 1983. Under Rule 27, Section 3(a), Claimant had fifteen days to appeal the disciplinary action. He did not do so. Giving Claimant the benefit of the doubt that he did not receive the dismissal notice, nevertheless, Claimant admits that he gained knowledge of the dismissal in October 1984 and yet did nothing until March 8, 1985 - a period far beyond the fifteen day limit for taking appropriate steps to perfect an appeal.

Second, Claimant voluntarily resigned on September 23, 1983, and also agreed on November 11, 1983, that he would not present himself for employment or reemployment with the Carrier. Having voluntarily terminated his employment (not once, but twice), Claimant's rights under the Agreement were terminated. We find no evidence in this record that Claimant was coerced or harassed into resigning or waiving any rights to reemployment. We therefore have no basis upon which to consider his Claim.

Third, and notwithstanding the above, even if we could consider the merits of the Claim, substantial evidence exists in the record to support the Carrier's determination that Claimant committed the offenses with which he was charged. The transcript of the hearing indicates that although the matter was originally scheduled for September 9, 1983, and was postponed at Claimant's request, Claimant did not attend the hearing held on September 15, 1983. Evidence introduced at the hearing shows that on August 16, 1983, Claimant was instructed by the Gang Foreman to stand aside and clear all tracks in accord with Safety Rule 3208. Claimant told the Gang Foreman that he could see all tracks and argued for approximately fifteen minutes concerning the instruction given to him. The record further reveals that on August 18, 1983, Claimant left his assigned job at approximately 10:00 a.m. without permission and did not return until after 12:00 p.m. On that same date Claimant stated that he was suffering from diarrhea and wished to be taken to the shop when, in reality, he went to see the District Claim Agent to discuss the settlement of a prior injury claim. According to the Claim Agent, when he met with Claimant at 2:30 p.m. on August 18, 1983, Claimant did not appear to be suffering from any ailment or injury. A B&B Mechanic testified that on August 18, 1983, at approximately 12:15 p.m., he observed Claimant fall over a visible silver painted air line that was approximately one foot off the ground. The Safety Supervisor testified that he conducted an investigation of the injury and concluded that Claimant could have avoided the area entirely to get to his destination by a different and shorter route which was an established roadway that was free of obstacles and as such violated Safety Rule 3030 which requires the use of established paths and routes and further requires employees to be alert to avoid tripping and slipping hazards. Thus we conclude that substantial evidence exists in the record to show that Claimant was insubordinate to his Foreman; provided false information as a subterfuge in order to meet with his claim agent; violated Safety Rule 3030 which resulted in his injury and failed to conduct himself in a manner so as to avoid personal injury as charged. Inasmuch as Claimant's past disciplinary record shows a five day suspension for violation of safety rules as well as a thirty day suspension for insubordination, we cannot say that dismissal was arbitrary or capricious amounting to an abuse of the Carrier's discretion.

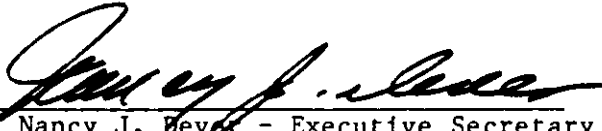
Under the circumstances, we cannot conclude that by proceeding with the hearing in absentia, the Carrier committed error. The record demonstrates that Claimant was granted an initial postponement at his request and the Carrier took all the necessary steps to notify Claimant of the rescheduled date. Claimant's failure to appear was at his own peril. We have considered the Organization's other procedural arguments and find them to be without merit.

For all of the above reasons, we must deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.