

The Third Division consisted of the regular members and in addition Referee William F. Euker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company

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

(1) The dismissal of Track Welder R. J. Ellison for alleged insubordination, alleged use of profane language over radio and alleged failure to comply with instructions from proper authority in violation of General Rules A, B, H, 600, 607(3) and 607(6) and Radio Rule 502 on February 21, 1986 was without just and sufficient cause and in violation of the Agreement (System File D-74/8600156).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him 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 waived right of appearance at hearing thereon.

This is a discipline case involving a Track Welder with approximately eight years' seniority, who was charged with insubordination for failure to comply with instructions and profanity while using the radio on February 21, 1986. Following a requested postponement, a formal investigation was held on March 18, 1986, and in a letter dated April 1, 1986, Claimant was notified he was dismissed from the Carrier's service. The Claim was progressed in the usual manner on the property and is now presented for our decision.

The Organization advances a procedural argument dealing with Carrier's alleged noncompliance with Rule 48, Paragraphs (e) and (f), in that neither the trial decision nor the transcript was timely furnished to the Claimant and his representative.

Our careful review of the record fails to disclose any procedural violations in this case. The record shows the decision letter, dated April 1, 1986, was transmitted by telecopier machine, and personally handed to the Claimant on April 1, 1986. Rule 48(e) requires that it must be furnished within twenty days of date of decision and it was so furnished. Rule 48(f) provides the transcript will be furnished promptly to the employee and his representative. The record reveals the transcript was dispatched on May 1, 1986, and in our opinion, although marginally, this complies with the Rule.

On the merits, the evidence condensed from the trial record convinces us that Claimant violated the Operating Rules in his use of the radio on the date in question. We are also satisfied that Claimant's conduct on February 21, 1986, was more defiant than cooperative and this attitude is substantially mirrored by his testimony at the trial. However we are not convinced that Claimant's conduct justified termination, the penalty assessed in this case, therefore it is our decision that he be returned to service with seniority unimpaired, but without compensation for time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.