

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Port Terminal Railroad Association

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

(1) The dismissal of Mr. C. J. Reese, effective July 1, 1987, for alleged violation of General Rules D, E and O and Rule 84, was arbitrary, capricious and in violation of the Agreement.

(2) Mr. C. J. Reese shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered, including holiday and overtime pay, that would have accrued to him had he not been dismissed July 1, 1987."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

Claimant was, at the time of the incident that gave rise to this case, employed by Carrier as a Trackman. On July 3, 1987, he was advised that he was dismissed from Carrier's service for violation of Carrier General Rules D, E, O and Carrier Rule 84. An Investigation into the charges was held on July 16, 1987. As a result of the Hearing, Claimant was found guilty as charged and his dismissal from service upheld. The Organization filed a claim on behalf of the Claimant that was denied in the early stages of the procedure, but on October 27, 1987, Carrier sent the following letter to Claimant:

"The Association has reviewed the transcript of the investigation in connection with your dismissal of July 1, 1987, and it is the decision of management that the discipline has served its purpose and you are being reinstated effective immediately providing you successfully complete the back to work physical.

You must report to this office within 10 days of receipt of this letter for the necessary papers for the return to work physical or with any information that would prohibit your return to work."

Claimant did not respond to the October 27, 1987, letter and on December 9, 1987, he was informed by letter that because he failed to return to work as directed, his name was being removed from the seniority list in accordance with Rule 5 (A) of the Agreement. Rule 5 (A) reads as follows:

"(A) Employees shall not, except in case of emergency, absent themselves from their duties without permission from some authorized supervisor or official. If absent in emergency the employee will report to his supervisor as quickly as possible the reason for such absence. Employees, absent more than thirty (30) days without proper leave, name shall be removed from seniority roster."

The Organization pursued Claimant's case and ultimately filed it with the Board. This Board will review this case from two perspectives:

1. Was the time held out of service, about 90 working days, appropriate?
2. Was Claimant's failure to return to work when instructed by the Company fatal to his position?

This Board has reviewed the record and on the basis of the documents before us and Claimant's past record, it is our opinion that a 30-day suspension would have been ample in this instance. We therefore direct Carrier to pay Claimant for the days he would have worked beyond a 30-working day Suspension commencing July 1, 1987, up to November 8, 1987.

As to Claimant's ignoring Carrier's directive to return to work, here, the Board takes another position. It is the opinion of this Board that Claimant was obligated to return to work, as directed in Carrier's October 27, 1987 letter. That letter does not indicate that Claimant had to agree to accept the time held out of service as a penalty in the case. It told him to report to work in ten days. He failed to do so. When Claimant failed to report within the thirty-day period, Rule 5 (A) became operative and his name was properly removed from the seniority list. This Board has no power to modify that action. The Parties agreed to Rule 5 (A) for their mutual protection and it is appropriately referred to as a self-implementing Rule. Claimant stayed away at his own peril.

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 6th day of June 1989.