

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

PARTIES TO DISPUTE: (Robert J. Columbus
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(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"(1) The dismissal of Foreman R. J. Columbus for allegedly being absent without authority from July 5, 1988 was without just and sufficient cause, arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.

(2) The Carrier violated the Agreement when it refused to afford the Claimant his right of appeal as set forth in Section VI. 'Discipline', following a hearing which was held on July 19, 1988.

(3) As a consequence of the violations referred to in either Part (1) and/or Part (2) above, Mr. R. J. Columbus shall be returned to his position with all seniority and benefits unimpaired and he shall be paid 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.

Third Party notice was given to the United Transportation Union and they submitted a brief to the Division.

This is a reasonably simple discipline case onto which the respective parties have piled numerous jurisdictional and/or procedural arguments, contentions and allegations. Each and every one of the jurisdictional and procedural arguments, contentions and allegations have been previously reviewed,

addressed and decided in detail by this Board in Third Division Awards 28726 and 28767. These same issues have also been examined and decided in Third Division Awards 28768 and 28791. We will not burden this record with a repeat of the issues and decisions thereon. Rather, the opinions expressed in the Awards cited supra are, by reference, made a part of the Findings and Award in this case.

When we examine the record in this case we find that Claimant was recalled to Carrier's service following an extended strike against the Carrier. Claimant testified that he received a return to service physical examination on June 30, 1988, and that on July 1, 1988, he reported to and informed the Track Supervisor at Gardner, Maine, that because of the death of his father-in-law he could not commence service on that date. Claimant thereupon filed a request for and was granted bereavement leave. The Supervisor at Gardner informed Claimant that he was to be assigned to the crew at Ayer. Claimant immediately contacted the Track Supervisor at Ayer by telephone and requested permission to be absent until Wednesday, July 6, 1988. The Supervisor at Ayer granted this permission.

Carrier says, for the first time in their Submission to this Board, that Claimant responded to his recall to service on June 24, 1988, and "failed to fill his assignment with ST. Claimant Columbus continued his employment with Amtrak in spite of his recall to ST." There is no probative evidence to be found in the case record to support these contentions by Carrier.

What is found in the case record is a notice dated July 6, 1988, addressed to Claimant charging him with being "... absent without authorization on July 5, 1988," Claimant was withheld from service pending the hearing which was scheduled for and held on July 19, 1988. Claimant was present and represented throughout the hearing. He testified on his own behalf and was permitted to cross examine the only witness which Carrier presented. During the hearing, Claimant testified to the same details of his recall to service as set forth above. After he identified by name the Supervisor who, he said, gave him permission to be absent on July 5, 1988, the Hearing Officer responded by stating "We don't have Mike Mitchell here to defend you on that" The Hearing Officer then summarily proceeded to call as Carrier's only witness another Track Supervisor who testified that "... I saw Mr. Columbus working for Amtrak on Western Ave." When asked to explain what Mr. Columbus was doing, the witness testified that "He was standing near the tracks, he was watching me go by in the track car." This is the sum total of Carrier's evidence against the Claimant.

Following the hearing, by letter dated August 18, 1988, Claimant was dismissed from the employment of Springfield Terminal Railway Company "for voluntarily withholding your services from the carrier."

The subsequent appeal from this discipline, the scheduling of an appeal hearing, the holding of an appeal hearing, the absence of any reply from Carrier to the appeal hearing, the absence of any reply from Carrier's Director Labor Relations to two (2) separate communications addressed to him on this matter are some of the procedural contentions which we have addressed earlier in this Award.

The primary purpose of a disciplinary hearing is to gather facts and explore circumstances which deal with or impact on the charge or charges which have been made by Carrier. Carrier has the unfettered right to make whatever charges they deem appropriate in a particular set of circumstances. However, they also have the primary responsibility to support the charges which they have made with substantial, probative evidence. They have the obligation to elicit testimony from those individuals who have first-hand knowledge of the situation under investigation. They have the responsibility to conduct a fair and impartial investigation before reaching the decision to discipline.

In this case, there were two (2) separate Carrier officials who had first-hand information relative to the charge and neither of them was called to testify. There is no proof of any kind in this case record to support the charge of absence without authorization on July 5, 1988. Neither does the hearing transcript support a conclusion that Claimant voluntarily withheld his services from the Carrier.

Therefore, Claimant should be reinstated to service and compensated for any wage loss which he may have sustained following the date on which he was withheld from service. Any wage loss due under this Award will be offset by any and all earnings made by Claimant in any and all employment in any capacity during the period that he was out of Carrier's service. Claimant is responsible for providing complete outside earnings records to the Carrier.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.