

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35373
Docket No. SG-35708
01-3-99-3-681**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of G. Y. Gore for reinstatement to service with payment for all lost time, including overtime, plus the 65 cents per hour skill differential, account Carrier violated the current Signalmen’s Agreement, particularly Rule 41, when it dismissed the Claimant from service without just and sufficient cause and without a fair and impartial investigation. Carrier File No. SIB-98-09-01AA. General Chairman’s File No. BRS 9811241. BRS File Case No. 11062-ATSF.”

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 were given due notice of hearing thereon.

The Claimant was scheduled to return to work on March 31, 1998, following a suspension. Sometime prior to 7:00 A.M. that day, the Claimant left a voice mail message for his supervisor advising that he would not be at work because his back was hurting. The message concluded by saying he would advise the supervisor later as to what was going on. Thereafter, the Claimant never returned to work, nor did he obtain a leave of absence. Accordingly, the Carrier directed him to attend a formal Investigation in connection with his absence from work between March 31 and April 10, 1998. The Notice of Investigation was first sent via certified mail to the Claimant's last known address, but was returned, indicating he had moved without leaving a forwarding address. A copy of the notice was sent to another address the Carrier believed he might have moved to. On the scheduled date of the Investigation, the Claimant did not appear, nor did he request a postponement. Although the Organization requested a postponement at the start of the Investigation, there is no indication it had any contact with the Claimant during this time, either. The request was denied.

The Organization objects to the Carrier holding the Investigation in the Claimant's absence. There is a long history of Awards of this Board holding that an Investigation conducted in absentia is not violative of an employee's rights under the Agreement. The Carrier's burden is to send a proper notice to the employee's last known address. It is not required to guarantee delivery of that notice. Placing the notice in the U. S. Mail satisfies the Carrier's obligation. It is also not necessary to try to locate alternative addresses for the employee, although the Carrier, in this case, took that extra step. Just as the employee has the right to attend the Investigation, he also has the right not to attend. The Board concludes the Carrier afforded the Claimant the first right, but he chose to exercise the second.

There is no dispute as to the proof in this case. The Claimant was charged with unauthorized absence, and the evidence shows conclusively that he neither came to work nor requested permission to be absent. The only question remaining before the Board is whether the disciplinary action taken by the Carrier was commensurate with the Claimant's offense, with consideration of his prior disciplinary record. That record shows the Claimant had received two suspensions shortly before the absence giving rise to this case. Both of those suspensions were for absenting himself without authority. In each case, he was also placed on probation for one year. The conditions of those probations were that any future offenses would result in his dismissal. We note that in 1995, the Claimant had served a five month suspension for an offense of

the same nature. The Claimant certainly was on notice that his failure to report for duty would subject him to dismissal. It appears in this case, that the Claimant simply abandoned his job. Under these circumstances, we do not find the discipline imposed to be excessive.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of March, 2001.