

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36169
Docket No. MW-35749
02-3-99-3-735

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Foreman B. L. Martin for his allegedly leaving the Company vehicle unlocked on February 19, 1998, for allegedly being absent without proper authority on February 17 through 27, 1998, for allegedly using a Company vehicle for personal use on February 13 through 17, 1998 and allegedly falsifying his time on February 5, 1998 was without just and sufficient cause, extreme, unduly harsh, an abuse of discretion and in violation of the Agreement (Carrier's File 1143302D SPW).**
- (2) As a consequence of the violations referred to in Part (1) above, Foreman B. L. Martin shall now be reinstated to service with seniority and all other rights unimpaired, that he be compensated for all wage loss suffered and have his record cleared of the incident."**

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.

At the time of his dismissal, the Claimant had some 16 years of service with the Carrier. His prior service record was also provided for the record.

The thrust of the Organization's challenge to the discipline in question is aimed at the fact that the Investigation was held in absentia. In the Organization's view, this violated the Claimant's right to a fair and impartial Hearing per Rule 45.

Our review of the record shows that the Organization's procedural objection must be rejected. It is undisputed that the Claimant received actual notice of the Hearing originally scheduled for March 5, 1998. On that scheduled date, the Claimant contacted the Carrier and requested a postponement. He also asked that he be notified by mail of the rescheduled date. He provided no updated information regarding his mailing address. The Claimant also asked that the Hearing be relocated from Portola to Oroville, California, for his convenience. The Carrier, accordingly, rescheduled the Hearing for March 9 in Oroville. It mailed the rescheduling correspondence to the Claimant's last known address. Because a weekend intervened, Carrier representatives also hand delivered copies to the Claimant's Post Office Box on Friday, March 6. In addition, the Carrier attempted to telephone the Claimant, but found his phone had been disconnected. The Claimant's Organization representative had his copies of the rescheduling letters and appeared for the Investigation at the designated date and time. The parties waited to begin the Hearing for approximately one hour before the Hearing Officer proceeded in absentia. The record does not show any attempted contact by the Claimant with either the Carrier or his Organization representative to explain his absence from the Hearing or to request a further postponement. Nor is there any evidence of any circumstances that prevented the Claimant from contacting the Carrier or the Organization at any time prior to the issuance of the Carrier's decision.

By its express language, Rule 45 did not require more, in terms of notification to the Claimant, than the Carrier provided. Accordingly, we do not find the Carrier to have violated these procedural requirements of the parties' Agreement. Moreover, it is well settled in this industry, that a properly notified employee may not avoid disciplinary consequences by failing to attend an Investigation. See, for example, Third Division Awards 28774, 29497, 32935, and 34048.

The record contains substantial evidence in support of each item of misconduct charged. While all are important, the falsification of his time claim and his extensive absence without authority are especially egregious. Given the nature of the misconduct involved and the Claimant's past record, which includes significant prior discipline, we do not find the Carrier's action to be unreasonable or an abuse of its discretion. To the contrary, the Carrier's action is in keeping with its UPGRADE disciplinary program. Accordingly, we find no proper basis for disturbing the Carrier's action.

**Form 1
Page 3**

**Award No. 36169
Docket No. MW-35749
02-3-99-3-735**

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 August 2002.