

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20509
Docket Number SG-20374

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Railroad that:

- (a) Carrier did not prove its charges against Mr. A. E. McAuliffe, Signal Helper, alleging he was absent without authorization on July 25 and 26, 1973, and therefore improperly dismissed him from service.
- (b) Carrier should reinstate Helper McAuliffe to his former position and pay him for all lost time.

OPINION OF BOARD: The Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Railroad is based on the contention that "Carrier did not prove its charges" against Claimant, alleging he was absent without authorization on July 25 and 26, 1973.

The uncontradicted testimony of Mr. McGough (R35) is that Claimant was absent from work without authorization on July 25 and 26, 1973. His testimony was hearsay. Under ordinary circumstances where questions of fact are in dispute, we would be inclined to give little, if any, weight to hearsay evidence. In the instant case, however, neither Claimant nor Brotherhood has stated unequivocally anywhere in the entire record that Claimant in fact came to work on dates involved. Moreover, on review of the entire record, this Board finds no unequivocal denial by Claimant or the Brotherhood that claimant was in fact absent on dates involved. Under the circumstances in this particular case, we think the hearsay evidence, although weak, is nevertheless prima facie sufficient to shift the burden of going forward with the proof onto the Claimant. This burden of going forward with the evidence was not met. Rule 59 of Agreement provides in part: ***"employees shall not be suspended or dismissed from service without a fair and impartial trial." The requirement is that the trial shall be fair and impartial. The trial is not a criminal proceeding and strict rules of evidence do not apply so long as due process in respecting the fundamental rights of an accused are present. The record in this case shows no denial of due process.

Absenteeism is a serious matter. As stated in Award No. 14601 (Ives):

"Unauthorized absences from duty, if proven, are serious offenses, and often result in dismissal from service."

No mitigating circumstances are present in the record before us. The record shows that the Carrier attempted unsuccessfully to apply preventive discipline and leniency to Claimant by reinstating him for prior absenteeism only 20 days before the absenteeism of July 25 and July 26, 1973.

On careful consideration of the entire record in this particular case, the Board finds that the Carrier's decision to dismiss Grievant was not arbitrary, unreasonable, capricious, unsupported by the record, or excessive.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.