

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21626
Docket Number MW-21876

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Monroe Alexander on July 16, 1975 was without just and sufficient cause (System File B-1363-1/Time Claims: General: Alexander, Monroe).

(2) The Carrier shall restore Monroe Alexander to service with pay and record adjustment as set forth in Agreement Rule 91(b) (6).

OPINION OF BOARD: Claimant was dismissed from service by Carrier's Roadmaster on July 16, 1975. Investigation was requested by the General Chairman of the Organization as provided for in Rule 91 of the applicable Agreement, and hearing was scheduled for August 5, 1975. The General Chairman was present at the hearing Claimant appeared, accompanied by Mr. Reubin Davis, whom he described as a personal friend who would be his personal representative. Claimant was advised that it would not be permissible for Mr. Davis to represent him, at which time Davis instructed the claimant to leave the investigation. The General Chairman advised claimant to remain at the investigation, but he elected to leave as suggested by Mr. Davis.

Rule 91(b)3 of the applicable Agreement reads:

"The employee may be represented by duly accredited representative of the Brotherhood of Maintenance of Way Employees; and shall have the right to have present, without cost to the Carrier, such witnesses as he may desire."

Claimant was entitled to representation at the investigation as provided for in the Agreement. See Broady vs Illinois Central, United States Court of Appeals, Seventh Circuit, decided July 25, 1951. Also, Second Division Awards 6381 and 6963. Following claimant's departure the investigation was conducted in his absence, but with the General Chairman present. On August 8, 1975, claimant was notified that as a result of the hearing conducted on August 5, 1975, his dismissal from service was affirmed.

On August 25, 1975, the General Chairman requested that another hearing or investigation be held to permit the claimant to testify in his own behalf. The Carrier agreed that the investigation would be re-opened at 1:00 P.M., October 3, 1975, to permit claimant to testify. Proper notice was sent to claimant's address by certified mail and return receipt received by Carrier, but Claimant did not appear at the re-opened investigation.

Claimant's failure to participate in the investigation of August 5, 1975, and the re-opened investigation of October 3, 1975, was at his peril. See Award 13127 and Second Division Award 6499.

There were no procedural errors in the record before the Board. There was substantial evidence to warrant claimant's dismissal. The claim will, therefore, be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.