

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22065
Docket Number MS-22225

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brian Paul Buleza
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(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on July 28, 1977, covering an unadjusted dispute between myself and the Chessie System Railroad involving the question of my dismissal from Chessie on June 18, 1976.

OPINION OF BOARD: By letter dated May 20, 1976, Claimant was informed that a hearing was scheduled to be held on May 27, 1976 relative to the charge of being absent from his assigned position without permission on May 14, 17 and 18, 1976.

Claimant failed to appear for the scheduled hearing. Neither did he request a postponement of the hearing or offer any reason why he could not attend on the scheduled date. As a result, the hearing was held in absentia.

The hearing record contains substantial evidence to show that the notice of hearing was properly issued; that Claimant had conversation with Chief Clerk Warner on May 24, 1976 and acknowledged that he had received the hearing notice and that Claimant was, in fact, guilty of the offense as charged. There is no indication in the record of mitigating circumstances. There is in the record evidence of prior derelictions of the nature involved here. It is noted that Claimant did not even file a rebuttal to Carrier's Ex Parte Submission thereby leaving material factual statements uncontroverted and undenied.

In our role in the review of discipline cases, we may not disturb Carrier's actions unless it can be shown that such action was arbitrary, capricious or excessive. The record in this case contains no such evidence. Therefore, we must deny the claim as presented.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.

