

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23110
Docket Number MS-22953

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Michael Johnson
(Burlington Northern Inc.

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 April 30th, 1979, covering an unadjusted dispute between me and the BURLINGTON NORTHERN INC., involving the following question:

Whether the termination of MICHAEL JOHNSON from the BURLINGTON NORTHERN INC. was proper and in accordance with the agreement between BURLINGTON NORTHERN INC. and its employees."

OPINION OF BOARD: The record shows that claimant, who is the Petitioner, entered the service of the Carrier on July 10, 1973. In December, 1977, he was regularly assigned as an operator at Carrier's Union Avenue Tower, Chicago, Illinois, with hours 2:45 PM to 10:45 PM.

The Carrier states that on December 28, 1977, it addressed and sent to the claimant and operator G. E. Greene, who relieved claimant at the end of his tour of duty, two notices advising them to attend investigations on January 4, 1978, involving two incidents:

"Cicero, Illinois
December 28, 1977

File EMP-E

Messrs. M. Johnson - Operator - Union Tower
R. Greene - Operator - Union Tower

Attend investigation in the Conference Room, Freight House No. 9, 5405 West 26th Street, Cicero, Illinois at 12:30 P.M. on Wednesday, January 4, 1978, for the purpose of ascertaining the facts and determining your responsibility in connection with the allegedly discourteous and disorderly conduct and improper transfer between Operators M. Johnson

"and R. Greene, and with M. Johnson's allegedly absenting himself from duty without proper authority on December 8, 1977, Union Avenue Tower, Chicago, Illinois.

Arrange for representative and/or witnesses if desired in accordance with governing provisions of prevailing schedule rules.

Acknowledge receipt by affixing your signature in the space provided on copy of this letter.

(Sgd) B. A. Turner
Trainmaster

Acknowledge

Date

"Cicero, Illinois
December 28, 1977

File: EMP-E

Messrs. M. Johnson - Operator - Union Tower
R. Greene - Operator - Union Tower

Attend investigation in the Conference Room, Freight House No. 9, 5405 West 26th Street, Cicero, Illinois at 1:30 P.M., Wednesday, January 4, 1978, for the purpose of ascertaining the facts and determining your responsibility in connection with allegedly improper transfer between Operators M. Johnson and R. Greene on December 21, 1977, Union Avenue Tower, Chicago, Illinois.

"Arrange for representative and/or witnesses if desired in accordance with governing provisions of prevailing schedule rules.

Acknowledge receipt by affixing your signature in the space provided on copy of this letter.

(Sgd) B. A. Turner
B. A. Turner
Trainmaster

Acknowledge

Date "

The claimant did not attend the investigations, which were conducted as scheduled, in his absence. On January 20, 1978, claimant was notified:

"Cicero, Illinois
January 20, 1978.

File: EMP-E

SSA No. 334-44-6566
(DF 9841)

Mr. Michael Johnson
570 Locust Street
Elgin, Illinois 60120

This is to notify you that effective Sunday, January 22, 1978, you are hereby dismissed from the services of the Burlington Northern Inc. for violation of Rules 958 and 702(B) of the Consolidated Code of Operating Rules by being discourteous and disorderly and for failure to make proper transfer to your relief on December 8 and 21, 1977, while assigned as Operator,

"Union Avenue Tower, Chicago, Illinois, as developed at formal investigations held on January 4, 1978 of which you were notified by letters addressed to you on December 28, 1977 and at which you failed to appear.

Your past unsatisfactory record was taken into account in assessing this discipline.

Acknowledge receipt by affixing your signature in the space provided on copy of this letter and relinquish any and all Company property including free transportation issued you.

(Sgd) B. A. Turner
B. A. Turner
Trainmaster

Acknowledge

Date

cc: Messrs. R. P. Dewey
M. A. Sawyer

SPECIAL DELIVERY
U. S. REGISTERED MAIL
RETURN RECEIPT REQUESTED."

In progressing the dispute before the Board, the claimant requested a hearing with the referee present. Such hearing was scheduled for 9:30 A.M., August 19, 1980, but was postponed at the request of the claimant because of a representative not being present. The hearing was rescheduled for 1:00 P.M., November 19, 1980, at which time the claimant was present with an attorney and another representative. The Carrier was also represented.

In his submission to the Board and in the oral presentation at the hearing on November 18, 1980, the contention was made that claimant was not properly notified of the hearings which resulted in the termination of his services.

The Board has carefully reviewed the record in the dispute and finds evidence that claimant did receive the notices of December 28, 1977; that he did not attend the investigations, nor did he request a postponement. The claimant's actions in this respect were at his peril. An employee may not deliberately refuse to accept a letter of charge, and then contend that he was not properly notified.

Attempt has also been made by claimant to distinguish between "investigation" and "hearing" as referred to in Rule 18. It is generally accepted in railroad parlance that the words "investigation" and "hearing" are synonymous. Further, there is no requirement in the Agreement that an employee must sign for an investigation notice.

Carrier's Rules 702(B) and 958, referred to in the notice of dismissal of January 20, 1978, provide:

"702(B) Employees must comply with instructions from the proper authority.

958. Operators going off duty must make a written transfer on the prescribed form of all undelivered train orders and messages, instructions, including CTC instructions, unfinished business, condition of wires, position of train order signals and overdue trains.

The operator going on duty must not handle the train order signal, train orders, or CTC control machine until the transfer has been completed. Each operator must personally sign the transfer. When shifts are not continuous, the transfer will be made in the same manner."

After reviewing the complete record in the case, and listening to the presentations at the hearing on November 18, 1980, the Board finds that there was substantial evidence to support the discipline imposed, which we find not to be arbitrary, capricious or in bad faith. The claim will be denied in its entirety.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.

