

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert E. Peterson, Referee

Award Number 24160  
Docket Number MS-24057

PARTIES TO DISPUTE: { R. L. Boyer  
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: "Has Consolidated Rail Corporation failed to observed the conditions of the agreed upon policy regarding unauthorized absences by unreasonable exercise of managerial discretion and inconsistency in applying the policy such that R. L. Boyer ought to be returned to service without loss of compensation, seniority and vacation rights, and to enjoy those benefits and privileges that he enjoyed prior to his dismissal? Additionally, was R. L. Boyer given proper notice of the hearing of July 19, 1978? Case: R. L. Boyer v. Consolidated Rail Corporation Case Docket SD 400, Eastern Region-Harrisburg Division."

OPINION OF BOARD: The claim herein arises from Claimant's dismissal from Carrier's service on August 1, 1978 account absenteeism. The record shows that on June 29, 1978 Claimant was absent from work without permission. It was Claimant's third unauthorized absence within a nine-month period. In this regard, provisions of a 1973 Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees, and to which Claimant was subject, a progressive system of discipline for absenteeism provides, "employees who are found guilty of unauthorized absence from work for the third time within a 12-month period shall be subject to dismissal from service."

In keeping with the above mentioned Agreement, Claimant was notified by certified mail, return receipt requested to his last known address, to attend a company trial on July 19, 1978 to determine his responsibility in connection with a charge which read: "Being absent without permission on Thursday, June 29, 1978. (Third Offense)" Claimant did not appear at the trial and it was held in absentia.

At the hearing Carrier introduced probative evidence of its notification of the trial to Claimant, including testimony that Claimant had additionally been notified verbally he had a letter to pick up at the post office. The Carrier also introduced into evidence testimony establishing the fact Claimant had not requested permission to be off the day in question and that there had been no request for a postponement of the trial.

In his presentation to this Board, the Claimant made allegations suggesting discriminatory treatment, but we are satisfied from our review of the whole record and Carrier's response to such matter that there is no basis in fact to the Claimant's charge. The record in this case not disclosing or giving us any indication that Carrier was discriminatory in its treatment of Claimant, or that its actions were arbitrary or unreasonable, this Board finds no reason to hold that the Carrier failed to observe the conditions of the agreed upon policy, or Agreement, regarding unauthorized absences by unreasonable exercise of managerial discretion and inconsistency in applying that policy or Agreement to Claimant Boyer. We likewise find no basis to hold that Claimant had not been given proper notice of the hearing of July 19, 1978. Claimant's agreement rights to a trial were fully observed. He was given due notice and ample opportunity to attend a hearing and explain the reasons for his unauthorized absence. The fact he was not present for the hearing due to his own conduct cannot be considered as having denied him the benefit of the spirit and intent of a fair and impartial trial.

Every employe is obliged by the employment relationship to report for work with a high degree of regularity. This obligation is stronger in the case of an employe who, like Claimant, is governed by and familiar with the nature and severity of penalties which can be imposed for an unauthorized absence. He had previously been tried and disciplined for past absences, and it must be assumed he was aware that a third unauthorized absence within the 12-month period subjected him to imposition of the ultimate penalty of dismissal from service. Under the circumstances, it was therefore incumbent upon Claimant to have made every effort to get to work, or, having failed to do so, to have made certain he was going to be at a hearing that he knew would follow such absence from work to substantiate the reasons for his not reporting for work.

For the reasons given above, Claimant's request for reinstatement and compensation must 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: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.