

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24550
Docket Number MW-24881

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

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

(1) The dismissal of Sectionman E. G. Padilla for alleged 'violation of General Notice, General Rule B and General Regulation 702 of Form 7908' was without just and sufficient cause and in violation of the Agreement (System File 6-23-11-14-55).

(2) Sectionman E. G. Padilla shall now be allowed the benefits prescribed in the first paragraph of Agreement Rule 48(h)."

OPINION OF BOARD: The claimant was employed as a trackman July 16, 1959. On August 10, 1981, he was notified to attend investigation:

"Notice of Hearing

Arrange to report to the District Office Building conference room, 406 West 100 South Street, Salt Lake City, Utah, at 1:00 PM, Friday, August 21, 1981, for investigation and hearing to develop the facts and determine responsibility in connection with your allegedly being absent without authority on July 24 and July 28, 1981.

Your actions in this matter indicate violation of General Notice, General Rule B and General Regulation 702 of Form 7908, 'Rules Governing Duties and Deportment of Employes', effective October 1, 1974, which read as follows:

General Notice (in part)

... To enter or remain in the service is an assurance of willingness to obey the rules. The service demands the faithful, intelligent and courteous discharge of duty.

General Rule B:

Employes must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the railroad for an explanation.

General Regulation 702 (in part):

Employes must report for duty at the designated time and place ... They must not absent themselves from duty ... without proper authority.

The hearing will be conducted in conformity with Rule 48 of the Agreement effective January 1, 1973, between the Company and the Brotherhood of Maintenance of Way Employees, as revised October 1, 1978, and amended effective April 1, 1981, and you are entitled to representation as provided in that rule.

You may produce such witnesses as you may desire at your own expense."

Copies of the notice of charge were sent to three representatives of the Organization. The investigation was postponed at the request of claimant's representatives to August 24, 1981. Notice of the postponement was mailed to claimant at his last known address, certified mail. Claimant did not appear for the investigation scheduled for 1:00 P.M., August 24, 1981, although his representative was present. The investigation was conducted in absentia, following which claimant was dismissed from service on August 25, 1981. In the investigation it was developed that claimant did not report for duty on the two days mentioned in the letter of charge.

In the handling of the dispute on the property the Organization contended that claimant did not know when the hearing was scheduled for until the evening of August 24, 1981; that his former wife signed for the certified letter, but it was not delivered to him until after the hearing was over. Contention was also made that claimant was working in Salt Lake on his regular assignment on August 24, 1981, but no one notified him when the hearing was to be held.

Many awards have been issued upholding discipline where investigations were held in absentia, and we see nothing wrong in holding the investigation in absentia in this case. However, it seems that more could have been done by representatives of the Organization, or officers of the Carrier, to be sure that claimant knew of the date and time of the postponed investigation.

We note that claimant's prior work record was far from satisfactory. However, under all the circumstances here involved, and considering claimant's length of service, the Board finds that permanent dismissal for failing to protect his assignment on two days was excessive discipline, and that the time that claimant has been out of the service should constitute sufficient discipline for the offense. We will award that claimant be restored to the service, with seniority and other rights unimpaired, but without any compensation for time lost while out of the service. Claimant should clearly understand, however, that the purpose of this award is to give him one last chance to become and remain a responsible and dependable employe, and that further major infractions by him may result in the permanent termination of his services.

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 Employes involved in this dispute are respectively Carrier and Employes 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983