

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24948  
Docket Number MW-25132

Thomas F. Carey, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( Consolidated Rail Corporation

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

(1) The fifty (50) demerits imposed upon Truck Driver R. Eorio, resulting in his dismissal, for alleged failure to report for duty at South Plainfield on May 20 and 21, 1981 was without just and sufficient cause (System Docket 714).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a Boom Truck Driver at South Plainfield, New Jersey where this dispute arose. Claimant was working under the supervision of Assistant Supervisor of Track, T. Mingolla.

The Carrier charges that on May 20 and 21, 1981, the Claimant absented himself from duty without authorization and without informing his supervisor that he would not be reporting to service those days.

This incident resulted in a formal investigation held on June 3, 1981, in which the following charge was addressed:

"Alleged failure to report for duty as Boom Truck Driver at your headquarters, South Plainfield, on the following dates:

May 20, 21, 1981.

In light of your previous attendance record, this constitutes excessive absenteeism."

As a result of this investigation, the Claimant was discharged from service.

The Carrier contends that the record is uncontroverted that the Claimant did not report for duty on the claimed dates. Nor did he inform his supervisor that he would be absent on those days. The Carrier insists that in light of these facts and Claimant's poor attendance record, dismissal is an appropriate penalty.

The Organization points out that the Claimant did not appear at the investigation. It contends that the Claimant was not given reasonable advance notice of the hearing as is required by Rule 5-c-1(a) of the controlling Agreement. That rule reads:

"5-c-1. Advance Notice of Trial

(a) An employee who is accused of an offense and who is directed to report for a trial therefor shall be given reasonable advance notice in writing of the exact charge on which he is to be tried and the time and place of the trial."

The Organization insists that the Claimant never received Carrier's notice of the trial. It argues that prior notice of the hearing is a substantial right which may not be abrogated by the Carrier. Therefore, it asks that the Claimant be restored to service with full back pay and benefits.

The entire record has been reviewed. It establishes that the Carrier sent Claimant a notice of the charges and hearing date via Certified Mail No. P34 6227503. That letter was sent to the Claimant's residence. However, the record reveals that the Claimant never claimed the letter at the post office.

The Carrier cannot be faulted for the failure of the Claimant to pick up his mail. It notified him in a timely manner of the investigation in accordance with Rule 5-c-1(a).

In Third Division Award No. 24650, this Board held that "the Carrier introduced credible evidence that the Claimant received personal service notifying him of the trial date, even though he did not appear at the hearing. Here, Claimant received the same notice, though he apparently chose not to claim the letter which contained the relevant information.

The Claimant's discipline record was also examined to determine the appropriateness of the penalty. The record indicates that Claimant had accumulated 85 demerits within the prior year for excessive absenteeism. Such a record is extremely poor. In view of that record and the Claimant's proven guilt, this Board must uphold the Carrier's dismissal of the Claimant.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.