

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25586  
Docket Number MW-25498

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Southern Pacific Transportation Company (Eastern Lines)

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

"(1) The dismissal of Track Laborer A. A. Ryes effective October 13, 1982 for alleged failure to return to his assignment on June 7, 1982 was without just and sufficient cause (System File MW-82-214/370-58-A).

(2) The Agreement was violated when the Carrier failed to schedule and hold a hearing which was timely and properly requested in conformance with Article 14(b).

(3) As a consequence of the aforesaid violations, Claimant A. A. Ryes shall be reinstated with seniority and all other rights unimpaired, and he shall be compensated for all wage loss suffered beginning October 13, 1982."

OPINION OF BOARD: The record shows that Claimant was dismissed from Carrier's service as a track laborer on March 17, 1982. On June 1, 1982, Carrier's Assistant Regional Engineer sent a certified letter to Claimant informing him that he was reinstated to service and that he should report on June 7, 1982, and that failure to do so could result in the removal of his name from the seniority roster. Two attempts were made by the Postal Service to deliver the letter, but without success and the letter was returned to the Carrier as "unclaimed". On June 28, 1982, the Carrier wrote to the Organization representative, informing him that the Carrier had attempted to contact Claimant but without success, and soliciting the help of the Organization representative. The letter stated that Claimant had until July 12, 1982 to report and would be considered as absent without authority after that date. No response was received from the Organization. On October 13, 1982, Claimant was sent a certified letter to the same address as the June 1, 1982, letter, informing Claimant that his name was being removed from the seniority roster for his failure to return to his assignment. The Claimant received the October 13, 1982, letter and on October 26, 1982, he requested a hearing with respect to what he termed his "second dismissal." On November 4, 1982, Carrier notified Claimant that he was removed from the seniority roster because of his failure to return to work, and denied his request for further hearing.

The record shows that claim in behalf of the Claimant arising out of his dismissal on March 17, 1982, was progressed in the usual manner on the property, and, failing of settlement, was referred to this Division of the National Railroad Adjustment Board and assigned Docket No. MW-25131. On June 28, 1984, this Division issued Award No. 24860, in which the Board held:

"Claimant A. A. Reyes (sic) was a track laborer with six years of service when he was removed from service on March 17, 1982 for being insubordinate to his foreman in violation of Rule 80. On March 22, 1982 Claimant was sent a letter dismissing him from service. He requested a hearing and on April 22, 1982 a formal hearing was held in which Claimant and the Foreman, as well as other witnesses testified.

"On April 29, 1982 Assistant Regional Engineer Cox by mail advised Claimant he had reviewed the transcript of the hearing and was sustaining the March 22 dismissal.

"On June 1, 1982 Cox advised Claimant by Certified Mail that he was reinstated to service as the 'discipline assessed you has now served it purpose.' and was to report on June 7, 1982. No conditions regarding the claim were imposed. The letter was returned as 'Unclaimed' after two attempts at delivery by the Postal Service. On June 28, 1982 Cox wrote Claimant's organization, seeking its help in locating Claimant and requested Claimant report to him by July 12, 1982. Claimant did not.

"In the opinion of this Board Claimant forfeited his seniority by failure to respond when he was reinstated after his dismissal."

Award No. 24860 was a final decision terminating Claimant's employment relationship with the Carrier. It disposed of all the issues in our present dispute. As Claimant's dispute with the Carrier has been adjudicated, the claim herein will be dismissed. See Awards Nos. 25261, 24789, 24297, and 23027.

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 claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.