

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The ten (10) days of suspension imposed upon Trackman L. Chappell for alleged 'Excessive absenteeism wherein you were absent from duty in whole or in part on....' August 3, 4, 5 and 6, 1984, was on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-1112D).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by Carrier as a Trackman assigned to Track Laying System Forces at the TLS Camp Facility, Grundy, Pennsylvania. On August 10, 1984, Claimant was charged as follows:

"Excessive absenteeism in whole or in part on the following dates: August 3, August 4, August 5, and August 6, 1984."

He was notified to attend a hearing in the matter on August 27, 1984. The hearing was postponed twice at the request of the Organization. It was ultimately scheduled and held on October 8, 1984. Claimant was not present at the hearing, but, over the objection of the Organization representative, the hearing was held without Claimant present.

The Organization contends that Claimant was not properly notified of the October 8, 1984 hearing date and therefore did not attend. Given this procedural violation, the case should be upheld and Claimant's record cleared.

Carrier contends it sent registered mail to Claimant's official address on a number of occasions and it was claimed and signed for as required. The registered letter to Claimant announcing the October 8, 1984 hearing, however, was not signed for and eventually was returned to Carrier, but after the hearing date.

Carrier concludes it met its obligation in this instance by properly mailing a notice of the hearing to Claimant's address of record and that Claimant did not appear at the hearing at his own peril.

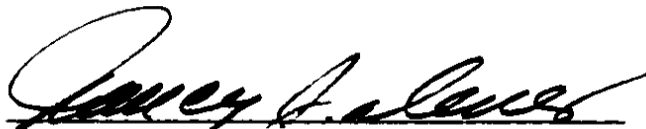
This Board has reviewed the facts of the case and the many Awards on the subject. We are persuaded that Claimant knew or should have known by means of the communication available to him (his receipt of registered mail, knowledge of hearing date postponements) that October 8, 1984 was a hearing date and that he should attend. We also conclude that since Claimant had not signed for the registered letter announcing the hearing, it was his intent to stay away from the hearing and attempt to have the discipline set aside by the Board on a technicality. Carrier fulfilled its obligation for timely notice and a full and fair investigation in this instance. The record supports Carrier's actions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.