

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (SPTC-WL)

STATEMENT OF CLAIM:

"Claim on behalf of J. Dunn, for reinstatement to service with all time lost and benefits paid, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 59, when it dismissed him in absentia and did not afford him a fair and impartial hearing." Carrier file SIG-SAC-37-D.

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.

Following postponements, a formal Investigation was held on March 6, 1987, into allegations that the Claimant had violated Rule 603 prohibiting employees from having firearms on Carrier property and conduct Rule 607 which prohibits quarrelsome behavior. Claimant was unable to attend the Investigation due to incarceration. By letter dated March 12, 1987, Carrier notified Claimant that he had been found guilty as charged and was dismissed from Carrier's service.

During the progression of this Claim on the property, the Organization argued that Claimant was not afforded a fair and impartial Investigation. The Organization's position was that inasmuch as Claimant was not present to face his accusers and to consider the testimony of witnesses, Rule 59 (Investigations) of the Agreement was violated.

The Board finds no language within Rule 59 that supports the Organization's position. Although the Investigation was held in absentia, Claimant was represented. There can be no question from this record that Claimant was guilty as charged. There is sufficient probative evidence that Claimant showed a gun and engaged in threatening action.

Finding no violation of Agreement Rule 59 or language which would require the Claimant's presence, the Board finds the Claim without merit. In the facts of this case, Carrier's dismissal of the Claimant is fully supported by the record (Third Division Awards 26006, 21299).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.