

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29810  
Docket No. MW-30651  
93-3-92-3-424

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

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

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

- (1) The dismissal of Laborer C. D. Rich for alleged '\*\*\* failure to comply with the conditions of [his] Conditional Reinstatement of December 7, 1990, namely Items 1, 2, and 5, \*\*\* in violation of Rules 604 and 607 \*\*\*' was arbitrary, capricious, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File MofW-D-ORE-91-RICH SPW).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his 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 employee 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 the Carrier as a track laborer in 1973. On December 15, 1989, the Claimant was dismissed from service for violation of Rule G. On May 21, 1990, Claimant was offered a conference to discuss possible reinstatement. Claimant did not respond to the offer. On September 12, 1990, Carrier sent Claimant a letter advising Claimant that he was:

"...hereby reinstated to service with seniority unimpaired and with the matter of compensation for time lost subject to appeal, provided he comply with the following conditions:

- (1) You must report to the Employee Assistance Counselor within thirty (30) days from date of receipt of letter.
- (2) The Company must receive a favorable recommendation from the Employee Assistance Counselor regarding return to duty.
- (3) You must receive a full medical release form the Chief Medical Officer,...which includes toxicological screening.
- (4) You must totally abstain from alcohol and other drugs and will be subject to random unannounced alcohol and/or drug tests for a period of two (2) years.
- (5) You must participate in a rehabilitation program as agreed to with the Employee Assistance Counselor.

If you do not comply with these conditions, you may be in violation of Rules 604 and 607 ... which may result in further disciplinary action...."

On September 24, 1990, Claimant rejected the Carrier's offer. On October 24, 1990, the Carrier wrote the Claimant that he was terminated. To make things even more confusing, the General Chairman requested a formal Investigation to determine why the Claimant was fired on October 24, 1990. A formal hearing was started on December 5, 1990, but never concluded. On December 24, 1991, Claimant was terminated once again, and once again Claimant requested a hearing, and once more another hearing was held on March 12, 1991, and once more Claimant was dismissed on March 25, 1991.

The record of this case shows Claimant was dismissed on December 15, 1989, but is void of any evidence as to the conclusion of the original dismissal. Therefore, all actions taken after that date were with a dismissed employee. When the Claimant rejected the conditional reinstatement he remained a dismissed employee. All the extra-curricular activity by the Carrier was totally unnecessary.

The Board based on the record must find that all the actions taken by the Carrier beginning May 21, 1990, were in essence attempts to offer reinstatement on a leniency basis to a dismissed employee, which were rejected. The claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin, Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.