

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31200
Docket No. TD-31742
95-3-93-3-772

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

PARTIES TO DISPUTE: (American Train Dispatchers Department of
(the Brotherhood of Locomotive Engineers
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Appealing the September 17, 1992, dismissal of Harrisburg Train Dispatcher G.R. Colstock from the service of the Carrier." (Carrier File TD-186D)

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 marked of sick February 18, 1992. After numerous attempts were made to contact Claimant, it was discovered that his phone had been disconnected.

Carrier wrote Claimant instructing him specifically to contact the Superintendent upon receipt. Claimant receipted for this letter on June 3, 1992, but did not comply with the instructions. With Claimants phone being disconnected and his absolute refusal to respond to the Superintendent's letter of instruction, the Carrier had no choice. It set up a Hearing charging Claimant with:

- 1 - Failure to give immediate written notice of a change in telephone numbers.

- 2 - Insubordination for failure to comply with the instructions from a Superintendent and
- 3 - Failure to protect his work."

Two notices were sent, one establishing the hearing and the second advising that the Hearing was postponed and setting a new date. Both letters were sent certified, return receipt. Both were returned unclaimed. Significantly, the Office Chairman was furnished a copy of each notice.

Having no current phone number and having both notices returned unclaimed, Carrier proceeded with the Investigation in Claimant's absence.

The Organization argues that the Carrier did not comply with the disciplinary rule when, allegedly, the Office Chairman did not receive a copy of the disciplinary notice and thus, was not at the Investigation.

This Argument is rejected. First of all there is nothing in the record from the Office Chairman himself saying he did not receive a copy of the notice. Secondly, the Office Chairman attendance at the Hearing is not mandatory. Rule 18 Section 1 (e) reads:

"*** If the employee desires to be represented at the hearing, he may be accompanied by his representative ***"

There is no showing that Claimant desired representation.

From all appearances, Claimant has abandoned his position and career with the Carrier. This is even more evident when Carrier stopped his sick pay on June 19, 1992, and no protest had been received as of September 21, 1992. This was established in the Hearing.

The Carrier had the right to hold the Hearing in Claimant's absence. The facts adduced thereat clearly established Claimant's culpability. The dismissal stands. The claim is denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.