

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad violated Rule 30, but not limited thereto, of the controlling Agreement when it unjustly dismissed Machinist Victor Bauza from service effective September 24, 1985.
2. That accordingly, the Seaboard System Railroad be ordered to reinstate Machinist Bauza to service with seniority rights unimpaired and reimburse him for all pay and benefits lost (made whole).

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The record shows that Claimant was employed by the Carrier as a Machinist at Hialeah, Florida, on November 13, 1974, and worked as such until furloughed in a force reduction on May 28, 1982. He was in furloughed status at the time of the occurrence giving rise to the dispute herein; however, while in furloughed status he retained his seniority as a Machinist with rights to recall to service.

On April 27, 1984, about 2:25 A.M., Claimant was involved in an incident at Hialeah resulting in a Police Officer being wounded, and Claimant being incarcerated on charges of attempted second degree murder, shooting into an occupied building and unlawful possession of a fire arm while engaged in a criminal offense.

On May 9, 1984, the following notice was issued to Claimant, which notice was delivered to him at Metro-Dade Jail:

"You are directed to attend investigation scheduled to be held in office of Assistant Master Mechanic, Hialeah, Florida, at 1:30 PM, Friday, May 18, 1984, to develop facts and determine responsibility, if any, in connection with possible violation of Rule 3 of the Seaboard System Railroad Rules & Regulations of the Mechanical Department, and conduct unbecoming an employee of the Seaboard System Railroad.

These possible violations having occurred on April 27, 1984, when you were arrested and charged in connection with the shooting and serious injury of a Hialeah police officer.

You may have representation if you so desire in accordance with the agreement under which you are employed, and you may arrange to have present any witnesses who have knowledge of the matter under investigation.

At the conclusion of the investigation your personal record file will be reviewed."

Several requests were made for postponement of the scheduled Investigation, which requests were granted. On April 30, 1985, Claimant was notified in part:

"Because the charges against you have not been disposed of by the appropriate State Court, the investigation is being postponed until such time as the charges are disposed of in the handling court."

The Investigation was subsequently held in absentia on August 14, 1985, due to Claimant's continued incarceration. Claimant was represented in the Investigation by Local Chairman of the Organization.

Testimony was adduced in the Investigation that Claimant had been found guilty in the Court proceedings for three felony counts for which he had been charged by the Civil authorities, with sentencing scheduled for August 21, 1985.

The record shows that on August 21, 1985, Claimant appeared before the Dade County Circuit and County Court, and was sentenced to prison terms of 30, 15 and 15 years on the respective counts, the sentences to be served consecutively, or for a total of sixty years confinement. By letter dated September 25, 1985, Claimant was notified of his dismissal from Carrier's service for violation of Mechanical Department Rule 3 and conduct unbecoming an employe. Rule 3, referred to, reads in part:

"(3) Disloyalty, dishonesty...violations of the law, vicious or uncivil conduct...will subject the offender to dismissal."

We find and hold that the conducting of the Investigation in absentia, under the circumstances here involved, did not deprive Claimant of a fair and impartial Investigation. Claimant's incarceration was attributable to his own actions. See Second Division Awards Nos. 9943, 9554 and 8192.

In the handling of the dispute on the property, Court records were introduced by the Carrier confirming the Court's action in sentencing the Claimant to a total of sixty years in prison. Court documents are matters of public record, and, as such, are admissible in proceedings of this nature at any stage of handling.

We find that there was substantial evidence in support of Carrier's action in terminating Claimant's employer-employee relationship. (See Third Division Award No. 25263.) The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.