

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No.162, Railway Employees'  
{ Department, A. F. of L. - C. I. O.  
{ (Carmen)  
{ Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That the Southern Pacific (Texas and Louisiana) Transportation Company violated Rule 34 of the controlling agreement when they unjustly dismissed Carman E. A. Reese from their service on November 11, 1977, following investigation held on November 10, 1977.
2. That accordingly, the Southern Pacific (Texas and Louisiana) Transportation Company be ordered to reinstate Carman Reese to service with all seniority rights unimpaired and compensate him for all time lost since November 11, 1977, and make him whole for all other benefits he may be entitled to during the time he has been held out of service.

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 employe 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 charged with violating Rules 801 and 810 of the General Rules and Regulations of the Southern Pacific Transportation Company. An investigative hearing was held on November 10, 1977 wherein he was found guilty of the charges and dismissed from service, effective 3:00 P.M., November 11, 1977.

Claimant argues in defense that he worked and completed his assignment on October 10, 1977, while carrier contends that he failed to remain at his duty station between 2:00 P.M. and 3:30 P.M. and claimed compensation for the time not worked.

In reviewing this case, particularly the investigative transcript, we find no procedural irregularities that affect the integrity of this proceeding. Claimant was afforded a fair and impartial hearing.

We do find, however, on the question of substantive merit that claimant violated Rule 810, which reads in pertinent part as follows: "Employees must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves without proper authority. Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

The record shows that claimant left the property at 3:30 P.M. This was his normal quitting time. It does not substantiate his assertions that he was working in an area between 2:00 P.M. and 3:30 P.M. that was not readily observable by others. There were not witnesses who actually saw him working then, nor any implied directive indicating that he was assigned to such area. The supervisor could not find him at that time, despite repeated attempts to locate him and his testimony does not contradict this finding.

We well nigh recognize the importance of appropriate attendance and reporting standards in our industry and unpermitted absences are inexcusable. But we feel that permanent dismissal for hiding out, is somewhat excessive under the specific circumstances of this incident.

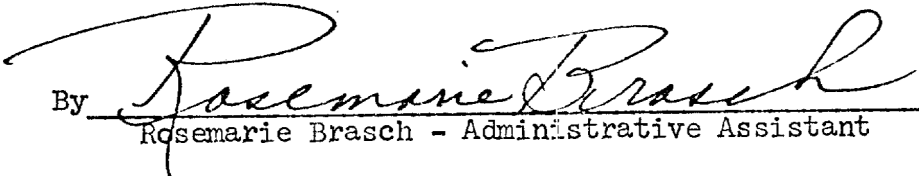
We believe that a measured and remediative penalty should be imposed and will consider the time spent from dismissal as sufficient punishment for this offense. Accordingly we will order that claimant be reinstated to his former position, but without back pay.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of August, 1979.