

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers AFL-CIO
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist Apprentice G. Stevens-Holland (hereinafter referred to as Claimant) from service on August 12, 1981.

2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, with compensation for all wage loss.

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.

Claimant, Machinist Apprentice G. Stevens-Holland, entered the service of the Carrier in November 1978 at the Sacramento Diesel Shop in California. In July 1981, due to apprentice rotation, Claimant was assigned to the Freight Car Wheel Shop.

On June 10, 1981, Claimant clocked out early and called in sick on June 11 and 12, 1981. On June 18 and 19, 1981, Claimant reported late; and on June 24 and 29, 1981, Claimant reported sick.

Claimant was cited for a formal hearing to be held on August 7, 1981, to answer charges of violation of Rule 810 of the General Rules and Regulations due to her irregular work attendance during the period of June 10 to 29, 1981.

Rule 810 states:

"Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

On August 12, 1981, Claimant was notified that she had been found guilty of violation of Rule 810 and was dismissed from Carrier's service.

The Organization contends that at the hearing, the Carrier did not present sufficient evidence of poor attendance. The Organization argues that in most cases, Claimant notified Carrier and advised Carrier of the reasons for her absence and was granted authority for said absences. The Organization argues that Rule 24 of the agreement states:

"An employee detained from work account sickness or for other causes, shall notify his foreman as early as possible. When returning to work, he shall give the foreman in charge sufficient notice (at least 8 hours) so that proper arrangements may be made.

(B) If an employee is unavoidably kept from work, he will not be unjustly discriminated against."

The Organization argues that since Claimant complied with the provisions set forth in Rule 24, she could not be found guilty of violating Rule 810. The Organization argues that the Carrier cannot grant authority for an absence and then allege a rule violation.

Finally, the Organization argues that although Carrier cited Claimant for violation of Rule 810, Claimant was, in part, dismissed for excessive absenteeism. The Organization points out that Rule 39 states:

"No employee shall be disciplined or dismissed without a fair hearing by the proper officer of the company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee shall in writing, be apprised of the precise charge against him, be given reasonable opportunity to secure the presence of necessary witness, and shall have the right to be represented as provided for in Rule 38."

The Carrier argues that the Claimant failed to protect her employment on six occasions in June 1981; and on the date of June 29, 1981, the Claimant exhausted the patience of her Supervisor.

The Carrier points out that Claimant admitted at the hearing that she was not at work on the days with which she was charged for failure to protect her assignment. Moreover, Carrier argues that her attendance record in June 1981 was merely a carry-over from her prior attendance records of 1979 and 1980.

The Carrier also argues that Claimant did not introduce any medical evidence at the hearing to indicate that she was disabled or unable to come to work. Carrier contends that the Claimant's absenteeism record of 22 percent absences out of the available work time in June 1981 was just too high.

Finally, Carrier points out that in her three years of employment, Claimant has been cited for hearings on two previous occasions, both dealing with attendance problems. For a previous violation of Rule 810 in August 1980, Claimant was suspended. Moreover, Claimant has been counseled on six separate occasions with respect to her attendance between 1979 and 1981.

This Board has reviewed all of the evidence in this case, and it finds that the Claimant was properly notified of the charge against her in her investigation notice letter of July 28, 1981. The letter referred to the specific rule and the nature of the Claimant's violation and, consequently, was sufficient to comply with the necessary requirements (see Second Division Awards 2436 and 6346).

Moreover, this Board finds that the Claimant did not deny that she had been absent or tardy on the days enumerated in her charge letter, and that she was off approximately 22 percent of the time in June 1981. Her prior record with the Carrier shows that she has had a poor record over her entire employment and has been counseled on numerous times for absenteeism and other rule infractions and has been charged with the violation of Rule 810 on two previous occasions.

Consequently, this Board finds that the Claimant was in violation of Rule 810, and Carrier had a legitimate reason to take disciplinary action toward her.

It is fundamental that this Board will not substitute its judgment for the type of discipline imposed by a Carrier unless Carrier's action is unreasonable, arbitrary, or in some other way improper. This Board has reviewed the action taken against this Claimant, as well as her prior record, and it finds that there is nothing improper with the dismissal action taken against the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1985.