

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician M. E. Purcell was unjustly treated when he was dismissed from service on October 7, 1988, following investigation for alleged violation of portion Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician M. E. Purcell to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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 were given due notice of hearing thereon.

On September 2, 1988, a letter was addressed to Claimant notifying him that effective September 2, 1988, a position as an electrician would be available at the Eugene Locomotive Maintenance Plant and he was being recalled from furlough to fill this position. The notice was sent certified mail to the Claimant at the address on file with the Carrier. The letter of September 2, 1988, was delivered and signed for by Claimant on September 6, 1988. In the letter of September 2, 1988, Claimant was advised that he would be required to pass a physical examination and back x-ray. He was instructed to contact the Division Mechanical Manager's office between the hours of 7:30 A.M. and 4:00 P.M., Monday through Friday, by Thursday, September 15, 1988.

On September 15, 1988, Claimant telephoned the office at approximately 2:50 P.M. requesting more time in which to make up his mind. He was advised by the Chief Clerk that he had been given a reasonable time according to the Agreement; at the same time she checked with the Division Mechanical Manager, and he instructed her to tell Claimant he could not have more time. The Claimant said "thanks a lot" and hung up.

On September 19, 1988, Claimant was notified by certified letter to the same address his recall notice was sent, to be present for a formal Hearing to develop the facts and place responsibility, if any, in regard to his alleged absence from duty without proper authority since September 15, 1988, in violation of Rule 810 of the Rules and Regulations of the Southern Pacific Transportation Company, in particular the portion reading:

"Employees must report for duty at the prescribed time and place ***. They must not absent themselves from their employment without proper authority. ****"

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

The U.S. Postal Service made three (3) attempts to deliver the September 19, 1988 letter to Claimant. It was returned to the Carrier's Mechanical Manager's Office on October 3, 1988. We point out again the September 19, 1988 letter was sent to the same address as the September 2, 1988 recall letter and Claimant acknowledged receipt of the recall letter.

In the Organization's letter of November 17, 1988, it stated that another employee was recalled prior to Claimant and was given a seven (7) day extension on recall to service. The Carrier's response stated that the other employee's letter of recall was sent out certified mail on September 2, 1988, the same date that Claimant's letter was sent to him. Both letters gave the two employees until September 15, 1988, to contact the office. On September 15, 1988, the other employee telephoned the office stating he would be returning to service and requested a physical be set up for the next week as he was out of State and would be flying in. A physical was set for him for September 23, 1988. He did not request an extension in order to make up his mind, but said he would be there on September 23 for the return to work physical. Therefore, the Organization's position that the other employee was given additional time to report is not supported by the record.

On the date of the Hearing before the Board, May 9, 1990, the Organization's representative presented to the Board a statement from Claimant stating certain evidence he asked to be considered. The evidence Claimant presented was not part of the record made on the property and therefore cannot be considered. Claimant was notified of the date of the Hearing at the same address the recall letter was sent and which he received. He had ample opportunity to appear at the formal Investigation. His decision not to attend was his own choice.

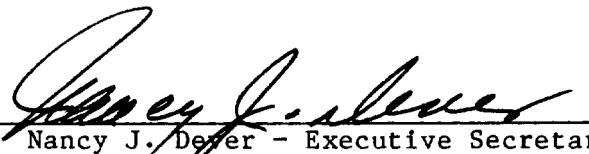
We find that the Carrier did produce substantial evidence in support of the charge that Claimant was in violation of Rule 810 of the Rules and Regulations of the Southern Pacific Transportation Company.

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 27th day of June 1990.