

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That under the current agreement Firemen and Oiler B. P. Dabill was unjustly suspended on April 18, 1976 and dismissed from the service of the Carrier on April 29, 1976 following an unfair and improper hearing.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employe to service with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
 - (b) Reinstate all vacation rights to the aforesaid employe.
 - (c) Pay employe's group medical insurance contributions, including group medical disability, dependents' hospital, surgical and medical and death benefits premiums for all time that the aforesaid employe is 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.

During the middle of claimant's tour of duty on April 18, 1976, he was withheld from service for conduct on that day described in the following statement of charge:

"You are hereby notified to be present at the Office of the Assistant Superintendent, One Spot Office, Eugene Yard, at 9:00 a.m. on April 23, 1976, for formal hearing in connection with your alleged failure to properly perform your assignment and for allegedly absenting yourself from your assignment on April 18, 1976, which may involve the following violations of the General Rules and Regulations of the Southern Pacific Transportation Company.

Rule 801: That portion reading employees will not be retained in the service who are indifferent to duty, and,

Rule 810: That portion reading 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 from their employment without proper authority."

Following the hearing, claimant was notified that he was discharged, by letter of April 29, 1976.

Petitioner claims that the notice of charges was not specific. In many of our previous awards, we have recognized that the intent of the "precise charge" requirements included in Rule 33 is adequate to advise the employee under charge of the conduct for which he is being investigated. The above quoted charge more than met that requirement. Furthermore, since no such objection was raised during the conduct of the hearing, claimant, under well recognized authority, has effectively waived any right he might have to raise such an issue belatedly. We further find that claimant was accorded a fair and impartial investigation during which all of his substantive rights under the Agreement were preserved.

We turn now to the merits of this case. We have reviewed the record of this case thoroughly. We find sufficient evidence therein to support the charge that claimant reported for work 35 minutes late and that there is no evidence in the record which could possibly excuse claimant for his tardiness.

With regard to that part of the charge alleging that claimant left his assignment about 6:45 p.m. and failed to return until 7:35 p.m., we find no evidence establishing claimant's culpability. In fact, claimant's supervisor testified at several points during the hearing that he had given claimant telephonic permission to leave the property to secure his lunch and take medication for his cold. The Supervisor also testified that he did not set any specific time for claimant to return, but that he presumed

he was aware that lunch periods ran only for twenty (20) minutes. Given the nature of the Supervisor's open ended permission to claimant, we cannot find claimant culpable for this offense.

Carrier also alleges that claimant was indifferent to and failed to perform his assignment properly. From the evidence of the record, we find that claimant had unquestionably accomplished a substantial portion of the work he was expected to perform on the night in question. True, he had not cleaned out certain shanties, but at about 8:30 p.m., Carrier removed him from service pending a hearing. We think that there is insufficient evidence in the record for us to conclude claimant failed to perform his assignment properly and we also conclude that if this were the case, it would be directly related to and a part of the absenteeism charge discussed above.

Given all the foregoing, we must consider whether the discharge penalty was appropriate. Our review of the Carrier's highest officer's handling indicates claimant's previous record was reviewed with the General Chairman, and that this previous record was far from exemplary. Claimant had previously been disciplined for absenteeism, and by claimant's own admission during the hearing, his Supervisors had, just a few weeks previous to this incident, warned him about a continuing bad absenteeism record. Our previous decisions have consistently recognized that absenteeism, if continued, can subject an employee to the penalty of discharge. We have also recognized that a Carrier should utilize progressive discipline to make a good faith attempt to teach and correct the employee, and if this fails, discharge is fully warranted. The following Awards are examples on the subject of discipline for absenteeism:

Second Division Award 6710 (Dolnick):

"Each employee has an obligation and a duty to report on time and work his scheduled hours, unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence. No employee may report when he likes or choose when to work. No railroad can be efficiently operated for long if voluntary absences are condoned."

Second Division Award 6240 (Shapiro):

"This Board has repeatedly pointed up the detrimental effect of absenteeism upon the operations of the railroads. (Award 1814 - Carter, Award 5049 - Johnson). The confusion and disruption created when an employee absents himself from work without due notice to supervision is harmful not only to the employer but to other employees as well. We therefore cannot fault management when it takes effective measures to deter excessive absenteeism and tardiness."

Third Division Award 20178 (Lazar):

"...The failure to protect one's assignment is a serious matter. As stated in Award No. 1460 by Referee George S. Ives,

'Unauthorized absences from duty, if proven, are serious offenses, and often result in dismissal from service.'

Considering the foregoing, we conclude claimant's discharge was excessive and modify the discharge to a one (1) year suspension. We also conclude that Carrier improperly withheld claimant from service pending a hearing. This was not a "proper case" which would justify such an action under the rule. Our decisions have consistently recognized that proper cases for suspension pending hearing are those where the employee has committed a serious offense which would jeopardize general safety or Carrier's operations, such as acts of theft, insubordination, altercations, etc.


Accordingly, we find that Carrier should compensate claimant for any loss sustained between April 18, 1976 and April 29, 1976, which represents the time he was wrongfully held from service. Carrier should also compensate claimant for all wage losses in excess of one year from the date of his discharge to the date of his reinstatement. In accordance with Rule 33 of the parties' agreement, Carrier may deduct any outside earnings claimant received during the period after April 29, 1976, to the date of his reinstatement. The claim for interest and other benefits not provided for in the Agreement between the parties is likewise denied.

A W A R D

Claim sustained in accordance with the Findings.

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 14th day of July, 1978.