

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 8022  
Docket No. 7960  
2-SPT-MA-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement Machinist Helper S. Henderson (hereinafter referred to as Claimant) was improperly dismissed from the service of the Carrier on August 12, 1977.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of dismissal to date of restoration to 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Following a properly conducted investigative hearing, Claimant was dismissed from service on August 12, 1977, for his actions on June 8, 1977, "for being dishonest when questioned by the General Foreman and for leaving your post of duty" in violation of Rules 801 and 810.

These rules read as follows:

Rule 801

"Employees will not be retained in service who are dishonest."

Rule 810

"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."

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The record shows that Claimant was away from his assigned work area; did not have specific permission to be there; and did not respond truthfully and frankly when questioned by a representative of the Carrier. For the offense involved, however, the Board finds the disciplinary action taken by the Carrier to be unduly severe in relation to the offense.

This mitigation of the penalty must not be viewed by the Organization or the Claimant as a finding in favor of the Claimant, however. Rather it should be taken as a serious warning that such actions by the Claimant are inconsistent with employee conduct and need not be tolerated by the employer.

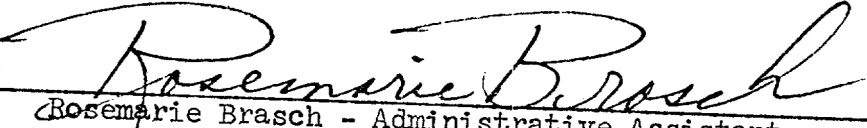
Although as the Organization points out, the employee's disciplinary history was not referred to on the property, it is nevertheless a fact that the Claimant has been warned of similar misconduct many times in the past. This, together with the extended suspension in the present instance, should fully alert him to the requirements imposed upon him if he is to retain his employment with the Carrier.

A W A R D

Claim sustained, but only to the extent of reinstatement with seniority and service rights unimpaired, but without compensation for wage loss.

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 1st day of August, 1979.