

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

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

Dispute: Claim of Employees:

1. That under the current Agreement, Electrician Harold Dixie was unjustly treated when he was dismissed from service on June 22, 1977, following investigation for alleged violation of portions of Rules 801 and "M" of the General Rules and Regulations and Safety Rule 4002 of Safety Rules governing Mechanical Department Employees of the Southern Pacific Transportation Company on March 10, 1977.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employee to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6 percent interest added thereto.
 - (b) Pay employee's group medical insurance contributions, including group medical disability, dental, dependents' hospital, surgical and medical, and death benefit premiums for all time that the aforesaid employee is held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employee.

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.

Claimant was dismissed from the service of the Carrier through letter of June 22, 1977 for "wrongfully reporting a personal injury having been sustained during your tour of duty March 10, 1977". The Carrier found the Claimant in violation of Rule 801 which reads in part:

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

Claimant was provided a thorough investigative hearing. The record of the hearing left the Carrier with the broad choice of accepting one of two versions of what happened in this instance. Claimant testified he seriously injured his right hand in the course of his employment on March 10, 1977; and had not injured this same hand just prior to March 10 in a non-occupational manner. Witnesses for the Carrier produced evidence of an injury to the hand prior to March 10, and no evidence of any knowledge of an event on March 10 involving a work-related injury. It is undisputed that on March 17, Claimant filed a claim with the Carrier in regard to a work-related injury. Without regard for the moment as to the timeliness of such claim, if the Claimant's version of the injury is accepted, there appears to be no cause for a penalty as severe as dismissal. On the other hand, if the March 17 claim of on-duty accident is false, in that the Claimant in actuality was injured in non-duty circumstances, then a violation of Rule 801 is clear, and the penalty of dismissal is inherent in the Rule.

Following the hearing, the Carrier did not accept the Claimant's version of what occurred and found the Claimant guilty of violation of Rule 801 in that this claim of on-duty accident was dishonest.

It is not up to the Board to hear the matter all over again, but simply to determine if the Claimant received a fair hearing and whether or not the Carrier's conclusions were reasonable and without obvious error. The Board finds that the hearing was properly conducted and can find no basis to determine that the Carrier's findings were unreasonable or in error.

The Organization claims that much of the testimony was hearsay or vague or indefinite in nature. The Board may not automatically reject such testimony, but rather must give it what weight is due based on the nature of the testimony. Further, no better evidence appeared to be available, and the parties -- particularly in a matter of credibility -- are entitled to do their best and then permit those in a judging capacity to evaluate what is presented.

Most persuasive to the Board in its evaluation is the testimony, although denied by the Claimant, that he was observed with a right-hand injury one or two days prior to March 10, the date on which the Claimant alleges he suffered an on-duty injury. Roundhouse Foreman Stowell testified that he saw Claimant with a bandaged right hand on March 8 and March 9. Fellow employe Pawelski testified that the Claimant had told her of an injured hand on March 9 or 10, prior to the time the Claimant alleges he hurt his hand on duty. A letter from another employe corroborated some of this, although, as the Organization points out, he did not testify to this directly at the hearing.

In its thorough defense of the Claimant, the Organization argues that several supervisors, having knowledge of an injury to the Claimant, nevertheless took no steps to require an accident report to be filled out or to make such reports themselves. The record shows that, while there was knowledge of a hand injury, the supervisors credibly testified that they were not specifically advised by the Claimant, prior to his own accident report on March 17, that the injury was work-related and thus requiring a report.

There is also the testimony of Foreman Stowell that the Claimant had telephoned him on March 10 saying "he wanted to talk to me about doing a favor and it was about his hand". This conversation was denied by the Claimant, but appears to the Board to add some weight to the conclusion that the Claimant was seeking personal advantage by reporting an off-duty injury as if it had occurred on duty.

The Organization also notes that 73 days elapsed between the date of the investigative hearing, April 11, 1977, and the issuance of the letter of dismissal, June 22, 1977, a period even more extensive than the 60-day limit set for the initial filing of claims. While such an interval is unusual, the Board does not find it contrary to any rule or required procedure and, equally important, the employee involved did not suffer loss of rights or deprivation of his defense because of this.

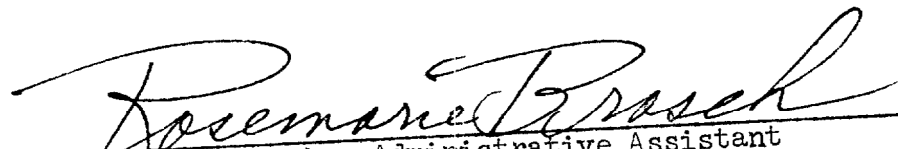
Based on the record, the Board finds no basis to disturb the conclusion reached and consequent disciplinary action taken by the Carrier.

A W A R D

Claim denied.

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.