

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

Parties to Dispute: { System Federation No. 162, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carman)
 { Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated Rule 34 of the controlling agreement when they unjustly withheld Carman Robert Mendoza from service starting December 8, 1977 and subsequently dismissed him from service on January 20, 1978, following investigation held January 5, 1978.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Mendoza to service with seniority rights unimpaired and compensate him for all time lost since December 8, 1977.

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 employees 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.

The claimant, Carman Robert Mendoza, is employed by the carrier at Houston, Texas.

On December 8, 1977, he was sent a notice of investigation to be held on December 20, 1977, which read in pertinent part:

"It is alleged that you were absent from your assignment between 9:30 A.M. and 3:00 P.M. on December 7, 1977 which may be in violation of rule 810 of the Southern Pacific Transportation Company General Rules and Regulations which read in part:

'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 tour of duty.'

"You also claimed eight hours on your timecard for December 7 and this may be in violation of Rule 801...which reads in part:

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

To accommodate the organization this hearing was postponed and held on January 5, 1978. Although the organization registered several objections to the conduct of the hearing, it is clear from the transcript that all parties were freely allowed to present witnesses, cross examine, introduce evidence and make statements. Based on statutory requirements and past practice, the investigation was appropriately conducted.

The Carrier bases its case on the fact that the foreman noticed the claimant was not at his place of assignment at 9:30 A.M. He was unable to locate Mr. Mendoza. After lunch he retained the assistance of two other supervisors and they jointly were unable to locate him. He did appear around 3:00 P.M. and fulfilled an assignment from the foreman before he ended his assignment at 3:30 P.M. The organization produced numerous witnesses who testified they had seen the claimant at various times during the day. One Carrier witness who assisted in the search testified that the claimant was at his assignment when he checked on him sometime between 1 and 2 P.M. The testimony of Mr. Mendoza brings some order out of confusion surrounding the testimony of the various witnesses. He testified essentially that he felt sick and between the hours of 9:30 A.M. and 3:00 P.M. he was at the far end rest room. He would take a walk from time to time to walk off stomach muscle aches. He further testified that he was at the work assignment at various times. It is clear that the claimant was absent from his assignment for a considerable portion of the day. He filled an assignment for the foreman shortly after 3:00 P.M., turned in his time card, and left the property at the end of his assignment. Based on the entire record, we are unable to conclude that the claimant meant to be dishonest in turning in a time card. It is evident, however, that rule 810 was violated in that the claimant was absent from his work, although it might have been for good reason, without informing his supervisor or any other company official. Some form of discipline is merited, but not permanent dismissal. Mr. Mendoza has suffered considerable financial loss since his dismissal and it is presumed that such fact will be remedial in nature. He simply must understand that he has a responsibility to abide by the rules and regulations and perform his work as assigned. Any further transgressions may result in more severe penalty.

A W A R D

Claimant will be returned to the service of the Carrier but without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

Form 1
Page 3

Award No. 8264
Docket No. 8166
2-SPT-CM-'80

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of March, 1980.