

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman 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 Apprentice J. L. Sepulveda was unjustly treated when he was dismissed from service on August 8, 1977, following investigation for alleged violation of portions of Rule 810 of the General Rules and Regulations governing Mechanical Department Employees of the Southern Pacific Transportation Company, being absent without authority on various work days from June 1, 1977, to July 5, 1977.
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 percent interest added thereto.
 - (b) Pay employe'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 employe is held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employe.

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.

Mechanical Department Electrical Apprentice J. L. Sepulveda, Claimant, was dismissed from service by Carrier for alleged violation of portions of Rule 810 of the General Rules and Regulations of Carrier dealing with absence from work without permission, as a result of absence during various work days from June 1, through July 5, 1977.

Rule 810 reads in relevant part as follows:

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

On July 5, 1977, Claimant received notice to report on July 14th for a formal hearing concerning Claimant's absence from work "from July 1 to date". On July 14, 1977, Claimant received another notice stating that, the initially scheduled hearing having been postponed, by mutual consent, till August 4, 1977, he should be prepared on that date for an investigation regarding his absences from June 1 through July 5, 1977. Following the August 4, 1977, hearing, Claimant was notified of his dismissal from service for his responsibility in absenting himself from work without permission during the period from June 1 through July 5, 1977.

Claimant appeals first on the grounds that he was not granted a fair and impartial hearing as a result of the fact that, at the outset of the hearing, the Hearing Officer stated that the hearing was for the purpose of establishing Claimant's responsibility for alleged unexcused absence from June 1, "to date". Since "to date" of the hearing was August 4, 1977, Claimant asserts that this charge of the Hearing Officer was not consistent with the written advance notice received by Claimant from Carrier, which stated that Claimant was to account for absences from June 1 to July 5, 1977.

It is the Board's opinion that this oversight did not deny Claimant a fair and impartial hearing. There is no significant evidence whatsoever on this record to indicate that Claimant was unaware of what it was that he was being charged with, or that any of the inadvertences with regard to the specification of appropriate dates in any way prejudiced his ability to defend himself in his hearing.

The record establishes that Claimant did in fact report for work on June 1, 2 and 6 of 1977 and was reported off sick on June 3, 1977. However, his absence for the period June 7 through July 5 was the result of the fact that Claimant was detained in jail by the State of California. It is, of course, well established precedent of this Board that incarceration following conviction of a crime does not constitute an excuse which must be accepted by a Carrier for failure of an employee to report for work and protect his position.

As for the quantum of discipline meted out in this case, Carrier has, as it may appropriately, evidently given considerable weight to the past performance of Claimant with respect to irregular attendance and general lack of concern for his job. Upon review of this record, the Board can only concur in the judgment of Carrier that Claimant's "attendance on the job has been erratic and unreliable since his employment". It is the judgment of the Board that there is no basis on this record for ruling that discharge in this instance is arbitrary, capricious or without foundation.

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Award No. 8369
Docket No. 8007
2-SPT-EW-'80

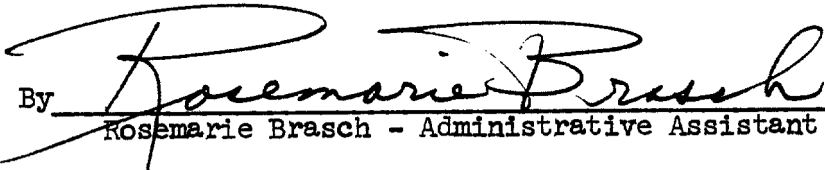
A W A R D

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