

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
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(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Sheet Metal Worker Henry Dobyne was unjustly and arbitrarily dismissed from service of the Southern Pacific Transportation Company (Pacific Lines) on January 17, 1977.
2. That accordingly, the Carrier be ordered to:
 1. Restore Claimant to service with all seniority rights unimpaired.
 2. Compensate Claimant for all time lost in addition to an amount of 6% per annum compounded annually on the anniversary date of claim.
 3. Make Claimant whole for all vacation rights.
 4. Reimburse Claimant and or his dependents for all medical expenses incurred while employee was improperly held out of service.
 5. Pay to Claimant's estate whatever benefits the Claimant has accrued with regard to life insurance for all time Claimant was improperly held out of service.
 6. Pay Claimant for all contractual holidays.
 7. Pay Claimant for all contractual sick pay.
 8. Pay Claimant for all jury duty and for all other contractual benefits.

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.

The claimant was employed as a Sheet Metal Worker with a seniority date of April 1968.

On May 18, 1976, the carrier directed a letter to the claimant charging him with a violation of Rule 810 in connection with his alleged absence from duty without proper authority on May 12, 1976. The hearing was originally scheduled to be held May 26, 1976. However, due to numerous requests for postponements by the organization, the hearing wasn't held until January 5, 1977. As a result of the hearing, the claimant was dismissed on January 17, 1977.

The claimant checked in at 6:50 a.m. for his 7:00 a.m. shift on May 12, 1976. There is no dispute that claimant left his assignment for home at approximately 8:00 a.m. The issue is whether he left with permission.

The Board concludes on the basis of the entire record, there is substantial evidence to support the charge that Mr. Dobyne left his position without proper authority.

Foreman E. A. Schulz testified that at approximately 8:10 a.m. on the 12th, he looked for but couldn't find Mr. Dobyne. He then asked Mr. Rudy Flores, another sheet metal worker, if he knew the whereabouts of Mr. Dobyne. Flores, according to Schulz, indicated the claimant had told him he was sick and going home. Schulz further testified that Flores indicated Dobyne had not told him to tell Schulz that he was going home.

The claimant admits he did not get permission from Mr. Schulz or any other supervisor to leave his assignment. His defense essentially is that he didn't have to tell a supervisor, that he had been told previously by Mr. Schulz "... if you ever had to check out and go home and he wasn't around to tell someone." He further testified, "I told Mr. Flores that I was leaving because I wasn't feeling very well and I asked him to tell Mr. Schulz." The union argues that by telling Mr. Flores to tell Mr. Schulz the claimant had complied with his supervisor's instructions and as such is not guilty.

It is the Board's opinion that this defense is unpersuasive for two reasons. One, there is little or no evidence that Mr. Dobyne did tell Mr. Flores to tell Schulz. Secondly, the rules are explicit that permission must be granted by a proper authority before leaving one's assignment. Another sheet metal worker can hardly be considered "proper authority".

The Board's opinion that there is little evidence that Mr. Dobyne told Mr. Flores to tell Mr. Schulz that he was leaving is based on the testimony of Mr. Flores, Mr. Schulz and the testimony of the claimant himself. Mr. Flores testified Dobyne did tell him he was leaving. However, in response to a question as to whether Dobyne told him to tell Schulz he said, "Again I didn't get the impression that I was supposed to tell him." We have already noted Schulz's testimony that Flores indicated to him that Dobyne had not told him to tell Schulz. Most important of all in persuading the Board that the claimant's defense is invalid is the claimant's own testimony as follows:

"(Q) Did you ask of Mr. Flores to advise the supervisor that you were going home because you were ill?

(A) No, I did not actually tell him to tell the supervisor, but I told him I was going home and I was under the impression that he would tell the supervisor." (Emphasis Added)

Having found substantial evidence supporting a finding of guilt, the Board must now consider whether the punishment was excessive or otherwise arbitrary and capricious. It is well established that when considering the appropriate quantum of discipline it is proper to consider the past record of the claimant. The claimant in this case has been dismissed and reinstated twice on a leniency basis. His most recent dismissal (August 1975) was also in part for a violation of 810. In view of this previous dismissal for a similar offense it cannot be said that the claimant is deserving of reinstatement a third time.

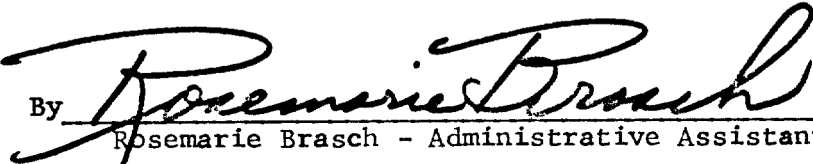
A W A R D

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 10th day of December, 1980.