

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
(  
( Southern Pacific Transportation Company

**Dispute: Claim of Employees:**

1. That under current Agreement, Carman R. C. Branch, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of August 3, 1978 after four (4) years of service with the Carrier.
2. That Carrier be ordered to:
  - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and he be compensated for all time lost retroactive to July 6, 1978 the date he attempted to return to work and was denied.
  - (b) Grant to the Claimant all vacation rights he would have enjoyed had he not been unjustly denied his return to duty.
  - (c) Assume and pay all premiums for hospital, surgical and medical benefits for Claimant and dependents, including all costs for life insurance.
  - (d) Pay into Railroad Retirement Fund the maximum amount that is required to be paid for an active employee, for all time he is held out of 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 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.

The Carrier states that on June 12, 1978, claimant, employed as a carman at Oakland, California, failed to report for duty. On June 15, 1978, someone notified the Carrier's supervisory personnel, that claimant was involved in a motorcycle accident and requested to be laid off. Claimant reported on July 12, 1978, and informed his supervisor that he had been confined in jail from June 12 to July 5, 1978.

On July 19, 1978, claimant was notified to appear for formal hearing on Thursday, July 27, 1978:

"... to develop the facts and place responsibility, if any, concerning your alleged absence from your employment without proper authority since July 12, 1978 (later changed to June 12, 1978).

You are charged with responsibility which may involve violation of General Rule 810, that portion reading:

'Employees ... must not absent themselves from their employment without proper authority...'

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

of the General Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company.

You are entitled to representation and witnesses in accordance with agreement provisions. Any request for postponement must be submitted in writing, including the reason therefor, to the undersigned."

The investigation was conducted as scheduled, and on August 3, 1978, claimant was dismissed from service. A copy of the transcript of the hearing has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated. Claimant was present throughout the investigation and was represented.

In the investigation evidence was adduced, including the claimant's statement that the reason for claimant's absence from June 12 to at least July 5, 1978, was his being incarcerated in jail, and that his wife fabricated the story about claimant being involved in a motorcycle accident. Claimant also admitted being in violation of Rule 810.

Numerous awards have been issued to the effect that being confined in jail cannot be regarded as a justifiable reason for an employee not protecting his assignment.

Based on the entire record, there is no proper basis for this Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

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Award No. 8759  
Docket No. 8487  
2-SPT-CM-'81

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 2nd day of September, 1981.