

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8922
Docket No. 8514
2-SPT-EW-'82

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician S. M. Runkle was unjustly treated when he was dismissed from service on October 5, 1978, following investigation for alleged violation of a portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation commencing on August 4, 1978.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore Claimant Mr. S. M. Runkle to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital, medical insurance, group disability insurance, railroad retirement contributions and loss of wages including interest at the rate of 6% per annum.

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.

S. M. Runkle (hereinafter referred to as the Claimant) entered Carrier's service on July 24, 1961 as an electrician.

On August 1, 1978 Claimant returned to duty following a leave of absence. On August 2, 1978 he failed to report for duty; however, returned to work on August 3, 1978. Thereafter, Claimant failed to report for duty from August 4 to September 15, 1978.

The evidence adduced at the formal hearing established Claimant's responsibility in connection with his unauthorized absence from duty; his action constituting a violation of Rule 810 of the General Rules and Regulations, that part reading:

"Rule 810: Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

The following are excerpts of testimony taken at the formal hearing:

"TESTIMONY OF ELECTRICIAN S. M. RUNKLE - INTERROGATED BY GENERAL FOREMAN R. E. PALMITER

Did you have permission to engage in this business knowing it would interfere with your performance with the Southern Pacific from 8/4 to 9/15?

Let's put it this way. Everyone knew what I was doing, and nobody told me I couldn't do any differently.

I will repeat the question. Did you have permission to engage in this business from 8/4/78 to 9/15/78 knowing that it would interfere with your performance with the SP?

I had no written permission, no.

Did you have authority to be absent from 8/4/78 to the present?

No.

Mr. Runkle, why did you come back to work on August 1, absent yourself on August 2, and then work on August 3?

Why? I was attempting to make a valid attempt to come back to work. My body couldn't handle it."

The above-quoted excerpts of testimony establish Claimant's responsibility for violation of Carrier's rules as charged and that the assessment of discipline was justified and commensurate with the offense.

The Claimant had been cautioned on several occasions prior to his dismissal from service that it was necessary to improve his attendance record and eliminate his excessive absenteeism which was primarily due to his working in the roofing business. The Carrier accommodated the Claimant by granting him a total of 90 days' leave of absence for the specific purpose of reaching a decision of whether he wanted a career with the Company or as a roofing contractor.

The following letter dated April 6, 1978 was placed on Claimant's personnel record:

"Mr. R. R. Ferdericksen
Plant Manager
Roseville, Calif.

Subject: Absenteeism Elect. S. M. Runkle

In December of 1977, I had Mr. Runkle in my office regarding his excessive absenteeism, that it was common knowledge that he was in the contracting business. That if he did not make decision to improve his absenteeism the first three months of 1978 I would request that action be taken under General Rule #810, or that he could request a leave of absence to make his decision on employment.

Out of 65 working days he has been absent 26 days. He has worked only 3 Fridays having rest on Saturday and Sunday.

I have again talked with Mr. Runkle on 4-5-1978 and his comment was that his not working on Fridays was relief Foreman J. Taylor being on duty and he would not work for this man. That he was still not able to make a decision on his employment but would improve his absenteeism.

As this condition has existed for a long time, I feel action should be taken under General Rule #810.

/s/ Boyce N. O'Coy
/t/ B. N. O'COY
General Foreman"

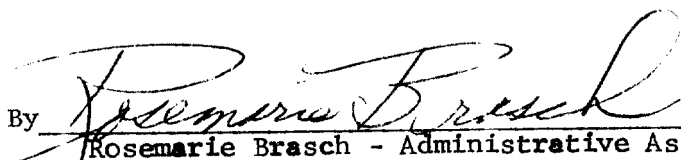
At the formal hearing Claimant admitted that he had no authority to be absent and offered no credible evidence in his defense. Therefore, we will deny the claim.

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 24th day of February, 1982.