

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

Dispute: Claim of Employee:

1. That under the current Agreement, Mechanical Department Electrician R. E. Lewis was unjustly treated when he was removed from service on June 15, 1979, and subsequently suspended from service for a period of fifteen (15) days on July 10, 1979, following investigation for alleged violation of portions of Rules 801 and 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring on June 15, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
  - (a) Compensate Electrician R. E. Lewis for all time lost during the fifteen-day suspension, as well as all time lost following June 15, 1979, when he was removed from service prior to the formal suspension; and the loss of wages to include interest at the rate of six percent (6%) per annum.
  - (b) Pay employee's group medical insurance contributions, including group medical disability, dental, dependent's hospital, surgical and medical and death benefit premiums, and railroad retirement contributions for all time that the aforesaid employee was held out of service.
  - (c) Reinstate all vacation rights to the aforesaid employee.

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.

Claimant, Mr. R. E. Lewis is regularly employed as a mechanical department electrician by the Southern Pacific Transportation Company at the Sacramento Heavy Maintenance (Locomotive Works) Plant, Sacramento, California. On June 18,

1979 Claimant was notified to appear at a formal hearing on June 27, 1979. Carrier charge was that he had been in violation of Carrier General Rules and Regulations 801 and 810 on June 15, 1979. On July 10, 1979 Claimant was notified of Carrier finding of guilt as a result of the formal hearing into this matter and Claimant was assessed discipline of a fifteen (15) day suspension from service. After Organization appeal before all appropriate Carrier officers on property this case is now before the National Railroad Adjustment Board.

Rule 801 reads (in pertinent part): "Employees will not be retained in the service who are ... insubordinate ... quarrelsome..."

Rule 810 reads: "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."

An analysis of the parties' submissions as they relate to this case, as well as the accompanying exhibits, leave some question in the mind of the Board, as a preliminary matter, of the exact length of the Claimant's suspension. Claim of Employees is that Claimant be compensated for "all time lost during the fifteen day suspension, as well as time lost following June 15, 1979 when he was suspended from service prior to the formal suspension..." (emphasis added). This suggests that the total suspension time of the Claimant exceeded fifteen (15) days. This view is corroborated by the General Chairman of the union, Mr. L. R. Longhofer, who states explicitly that employee lost "over (30) thirty days" (Ibid.) and this view is compounded by the Labor Relations Officer of the Carrier, Mr. L. C. Scherling, who appears to agree with this interpretation. At the same time, Carrier's Submission to the Board, submitted by Mr. L. M. Fox, Assistant Vice-President of Labor Relations, explicitly states that: "on the basis of the evidence adduced at the formal hearing held with Claimant on June 27, 1979 he was suspended from service of Carrier for a period of 15 working days. Carrier's Plant Manager included the period withheld from service pending the hearing and allowed Claimant to return to service on July 9, 1979" (emphasis added). If the latter is the case, it would not have been possible for the Claimant to have been off duty on suspension for thirty (30) days, as suggested by Mr. Longhofer. The origin of the confusion can be found in the notice to Claimant of the formal hearing results by Carrier Works Manager, Mr. J. R. Allen who states simply, in his July 10, 1979 letter: "... you are hereby suspended for a period of fifteen (15) days from the Southern Pacific Transportation Company" without explicitly specifying, in the original notice, if (a) the days assessed were actual or working days, or if (b) suspension time preceding hearing was to be included therein. In either case this confusion, which does no service to Claimant whose case is before the Board, will be operationally rectified by the Board in the instant case. Claim will here be defined, therefore, to include the suspension of all working days levied against the Claimant, subject to Rule 39 of the Agreement between the parties, whether pending the hearing or following the hearing, result of Claimant's alleged violation of Rules 801 and 810 on Carrier property.

The role of the Board in discipline cases is not to substitute its judgment for that of Carriers but, in its appellate function it is only to determine if the discipline levied is appropriate in view of substantial evidence. An analysis of the hearing testimony shows conclusively that Claimant was in violation of Carrier General Rule and Regulation 810 with specific reference to that provision which states that employees must not absent themselves from their employment (and in this case, work station) without proper authority. There is not credible nor substantial evidence, however, to sufficiently convince the Board that Claimant was in contravention of Rule 801. That provision of this rule, as cited, which deals with insubordination was not developed at all at the hearing, and evidence that Claimant was quarrelsome was lacking. Since the Board finds that Claimant, therefore, is culpable only in part, as charged, it herein exercises its prerogative, as it has done in the past, to reduce the penalty to a measure it considers the circumstances warrant. Claimant's suspension shall be reduced by five (5) working days with all privileges restored as stipulated by Rule 39 of the Agreement between the parties. No interest on recouped compensation since the Agreement makes no provision for this.

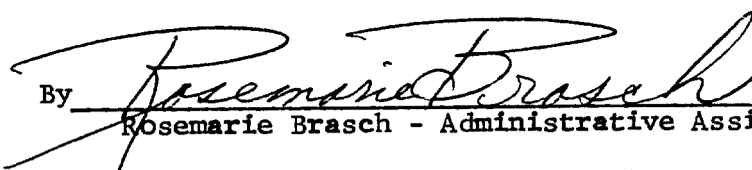
A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1982.