

The Second Division consisted of the regular members and in addition Referee David P. Twomey 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 Apprentice F. A. Losorelli was unjustly treated when his personal record was assessed thirty (30) demerits on October 13, 1978, following formal investigation for alleged violation of Rule 810 of Carrier's General Rules and Regulations on August 22 and 28, 1978, and who lost three (3) hours of compensation for August 22, 1978, and two (2) hours and forty (40) minutes compensation on August 28, 1978.
2. That accordingly, the Carrier be ordered to:
 - (a) Rescind the thirty (30) demerits assessed Electrician Apprentice Losorelli's personal record.
 - (b) Compensate him for three (3) hours for August 22, 1978, and two (2) hours and forty (40) minutes additional time for August 28, 1978, at the straight time pro rata rate.

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.

By letter dated September 8, 1978, the Claimant, Electrician Apprentice F. A. Losorelli, was notified to attend a formal hearing in connection with his allegedly being away from his assigned post of duty without proper authority on August 22, 1978 between approximately 9:00 A.M. and the close of shift and also on August 28, 1978 between approximately 12 noon and 2:40 P.M. The notice identified that such allegations may involve violation of the below quoted position of Rule 810 of the Carrier's General Rules and Regulations:

"Employees must ... 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..."

A formal hearing was held on September 14, 1978. By letter dated October 13, 1978, the Carrier notified the Claimant that the evidence adduced at the formal hearing in its judgment established his responsibility for being away from his assigned post of duty without proper authority at approximately 9:00 A.M. to the close of shift on August 22, 1978, and again on August 28, 1978 between approximately 12 noon and 2:40 P.M. The Carrier, based on the above determinations, assessed the Claimant thirty demerits and such was entered on his discipline record. The Organization appealed the discipline, and the dispute is now properly before the Board.

We find that substantial evidence of record supports the Carrier's finding of responsibility for the violation of Rule 810 in the instant case concerning the dates of August 22, 1978 and August 28, 1978.

Foreman Hutchinson testified as follows concerning August 22, 1978:

"At approximately 9:00 AM on August 22nd on my tour through the Electrical Shop, Mr. Losorelli was not present. After frequent tours of the Electrical Shop from fifteen to twenty to thirty minutes, I continued to notice that he was not present. I asked those in the close proximity of his working area where he might be, and they didn't know. I continued to do so the entire day until 3 PM, looking through the Electrical Shop for Mr. Losorelli. I toured the Electrical Shop, I would say three to four times an hour. Mr. Losorelli was not present the entire day after 9:00 AM."

Concerning August 22, 1978, the Claimant, Mr. Losorelli, testified in part, in response to questions from Interrogating Officer, Mr. Hines:

"Who did you notify that you were leaving to go to a doctor for an emergency?

Well, that day no one. It was lunch time. I just split right away. The next morning, I did.

Did you leave any note?

No, I just left right away.

Did you notify the lead work man?

I just left, I assume it was lunch time.

Then you left the property without permission?
Yes."

Foreman Hutchinson testified that he confronted the Claimant at 7:00 A.M. on August 23, 1978 and presented him with the problem of the preceeding day and at no time did the Claimant give a valid reason or mention visiting a doctor. We find that substantial evidence of record supports the Carrier's finding that the Claimant was responsible for violating Rule 810 on August 22, 1978.

Concerning August 28, 1978, Foreman Hutchinson testified that after 12 noon he did not see the Claimant until 2:40 P.M. Mr. Hutchinson testified that he made inquiries about the whereabouts of Mr. Losorelli on August 28. He testified that he asked Electrician Powers about Mr. Losorelli. He also testified that he was unable to assign him to any other journeyman after Mr. Snyder had gone home, because he could not find him -- because he could not locate him. The Claimant called a number of witnesses on his behalf. One of the witnesses, Electrician Apprentice Don Munoz, testified that on August 28 Mr. Hutchinson approached him between 12 noon and 2:40 P.M. and asked if he knew where Mr. Losorelli was. Mr. Munoz testified that he did not recall what his answer to Mr. Hutchinson was on August 28, 1978. The Claimant called four witnesses to support his position that he was at his work station on August 28, 1978 between noon and 2:40 P.M. We have reviewed the testimony of Mr. M. M. Ramierez, Mr. Munoz, Mr. Carrillo and Mr. Consiglio. Sheet Metal Worker Ramierez recalled seeing the Claimant around Mr. Ramierez's work area at "2:00 or 2:10, something like that." Such testimony alone does not prove that the Claimant had remained at his post of duty and had devoted himself exclusively to his duties during his tour of duty as required by Rule 810. Mr. Munoz testified that he was asked by Mr. Hutchinson on August 28 if he knew where Mr. Losorelli was, and he testified that he had been asked but that he did not remember what his answer was. He testified in the affirmative to the question, "Did you observe Mr. Losorelli between the hours of approximately 12 noon to approximately 2:45?" No additional testimony as to time and place was developed from the witnesses. Mr. Carrillo testified as follows concerning August 28, 1978:

"CARRILLO: ... During the hours in question 12 noon to 2:40.

On that particular day, I had seen him, and I recalled we had a conversation concerning eyeglasses. As for exact time, I couldn't say for sure.

RAMOS: Between 12 and 2?

HINES: He just stated he didn't know for sure.

CARRILLO: On the particular day, I remember I spoke to him I seen him during lunch and after lunch. I possibly did talk to him both times from 12:00 or 3:00 whatever are the hours in question."

Mr. P. Consiglio testified that he did not see or talk to the Claimant between the hours of 12 noon and 2:40. Mr. Kill and Mr. Snyder were called for other purposes by the Claimant and did not testify that they observed Mr. Losorelli at his work place on August 28, 1978.

Based on the entire record concerning August 28, 1978, including the testimony of Foreman Hutchinson and the corroboration by Mr. Munoz that Foreman Hutchinson had gone through the work area looking for and asking employees concerning the whereabouts of Mr. Losorelli, we find that substantial evidence of record exists to support the Carrier's finding that the Claimant was responsible for violating Rule 810 on August 28, 1978.

Form 1
Page 4

Award No. 9030
Docket No. 8640
2-SPT-EW-'82

We shall deny this claim.

A W A R D

Claim denied.

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 21st day of April, 1982.