

The Second Division consisted of the regular members and in addition Referee Kay McMurray 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 R. L. Brown was unjustly treated when he was dismissed from service on July 5, 1979 following investigation for alleged violation of portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring from May 30, to June 7, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Restore Electrician R. L. Brown to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of six percent (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 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.

Claimant, Mr. Brown, was notified by letter June 7, 1979 to appear for an investigation on June 22, 1979. He was charged with being absent from duty. There was no acknowledgement of receipt received by the Carrier. Accordingly, a second notice was mailed on June 21, 1979, rescheduling the hearing for June 29, 1979. A copy of the original notice accompanied the new notice. Claimant signed the post office receipt acknowledging the second letter.

The investigation was held as scheduled in the second notice. Mr. Brown did not appear at the hearing but was represented by his Organization. We find that the hearing was conducted in accordance with ~~contractual~~ requirements and past practice. Following that investigation the penalty herein complained of was assessed.

The Organization raises the defense that the hearing was not fair and impartial as required by contract. In so doing, it points out that Mr. Brown was not present to confront his accusers. Claimant signed for receipt of the second notice of hearing four days before it convened. There is nothing in the record to indicate that anyone heard from him. Petitioner cannot frustrate the process by simply staying away from an investigation. He was properly notified and was represented by his Organization.

In assessing penalty the Carrier charged Mr. Brown with violation of a portion of Rule 810 which 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 ...

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

The record is clear. At the time the notice was mailed Mr. Brown had been absent from work from May 30, 1979 to June 7, 1979. He had not been excused nor was any reason given for his absence. He was still absent without permission at the time of the hearing, although the Carrier testified he had been contacted and warned that discipline might be imposed. Such action constitutes a violation of the rule as charged.

Based on the foregoing and the entire record, this Board has no alternative but to uphold the decision of the Carrier.

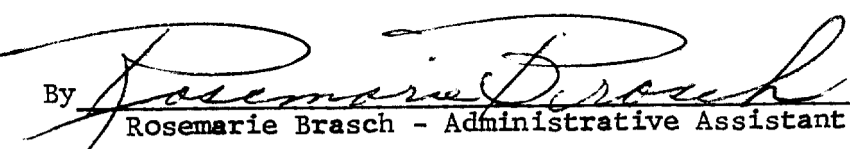
A W A R D

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.