

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 Employes:

1. That under the current Agreement, Mechanical Department Electrician T. L. Ruiz was unjustly treated when he was dismissed from service on October 11, 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 September 4, 1979, through September 21, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Restore Electrician T. L. Ruiz 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 including 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. Ruiz, was notified by letter dated September 21, 1979 to appear for an investigation on October 4, 1979. He was charged with continued failure to protect his employment on September 4, 1979 through September 21, 1979 in violation of Rule 810 of the General Rules and Regulations. The investigation was held as scheduled and following that hearing the penalty herein complained of was assessed. We conclude after a careful review of the transcript that the investigation was conducted in accordance with contractual requirements and past practice.

Rule 810, on which the Carrier relies, reads in pertinent part:

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

The record with respect to the period of time under consideration is clear and unchallenged. His immediate supervisor testified that during the period of time under consideration claimant worked only 34 hours out of a possible 112 hours. The record reveals that on some days his wife called in to report him off sick. On other days nothing was heard from Mr. Ruiz. The foregoing absences translated statistically into an absent rate in excess of 60%. Clearly such performance by an employee cannot be countenanced by the Carrier if it is to perform an efficient operation in furtherance of its public responsibilities as a common carrier. Some form of corrective action was warranted. Claimant's defense is, perhaps, stated most clearly in his own testimony:

"I do like to say that these two time cards, (covering the period of time under consideration) they don't really look too good obviously, but if I could possibly be given a little leniency and maybe another two weeks or more to give you guys another show..."

The type of leniency requested is within the control of the Carrier, not this Board. Our function is to determine whether or not the Carrier's action was justified by the credible evidence and if the penalty was excessive, arbitrary, or capricious. In this case the record clearly supports the charges. In assessing penalty the Carrier points to the past performance of Mr. Ruiz. That record reveals numerous discussions with claimant relative to the same problem here under consideration. He was suspended from service for 90 days in 1977 for violation of the same rule. (That suspension was reduced to 30 days by a Second Division award but the guilt remains.) Additionally the Carrier had granted a 90-day leave of absence to the claimant to allow him time to straighten out personal problems which he blamed for his erratic performance.

Unfortunately, the same performance as evidenced herein continued after all the foregoing. It is clear from the record that the Carrier had made more than reasonable effort to continue claimant as a responsible employee without success.

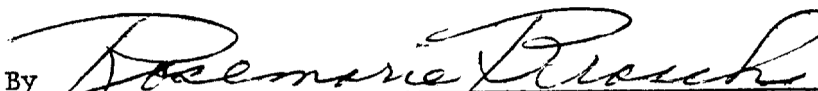
In view of the foregoing and the entire record we find that the Carrier was within its legal rights in assessing the penalty.

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.