

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Southern Pacific Transportation Company

Dispute: Claim of Employees:

Claim in behalf of Machinist T. A. Swan, San Antonio, Texas, for reinstatement and compensation for all lost time from January 24, 1980, due to the Carrier having dismissed him from their service on the basis of an investigation held January 15, 1980, which was not justified nor sustained by the record.

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, a third trick Machinist at the Carrier's San Antonio diesel facilities, was charged with violating Carrier Rule 810. Specifically, Claimant was charged with being absent without proper authority on December 28 and 29, 1979, and on January 1, 2, and 3, 1980. After an investigation held on January 15 and 16, 1980, the Carrier dismissed Claimant from service.

The record before this Board contains several substantial factual conflicts. However, there is no doubt that Claimant was absent on the dates in question. The issues are whether he correctly marked off and whether his absence should be excused due to a genuine illness.

The Carrier argues that the hearing officer could attach more weight to the testimony of the probationary supervisor and the electrical foreman than to Claimant's self-serving denials. The probationary supervisor testified that Claimant notified the supervisor that he would be late on December 28, 1979, but the Claimant never did report to work. The electrical foreman stated that on December 30, 1979, Claimant called before his shift commenced to inform the Carrier that he would not work because he was going hunting. As to the remaining three dates, there is not any notation in the Carrier's layoff book indicating that Claimant called to report off work. So the Carrier submits that it could reasonably conclude that Claimant was absent without proper leave and based on his poor prior attendance record, the penalty of dismissal was warranted.

On the other hand, Claimant declared that he was ill all five days. He emphatically denies telling the foreman he was hunting on December 30, 1979. A computer clerk did confirm that Claimant called in during his assigned shift on December 28, 1979 to report off due to illness but the clerk inadvertently forgot to record the call in the layoff book. Claimant said he was ill through January 3, 1980 and he submitted a note from his physician to corroborate his testimony. On January 1, 1980, Claimant did not call at all but he claims he had received prior permission from his foreman to be absent. The Organization, therefore, contends the Carrier has not proffered sufficient evidence demonstrating Claimant was absent without proper authority because he was off due to illness. Lastly, the Organization asserts that the supreme penalty of dismissal was excessive under the circumstances of this case.

As an appellate body, this Board is precluded from resolving credibility issues. The Carrier could reasonably decide to give substantial credence to the testimony of the probationary supervisor and the electrical foreman. Claimant's testimony had inherent contradictions. He gave two different explanations for his January 1, 1980 absence. We find no evidence in the record casting doubt on the electrical foreman's veracity. At the time he took the December 29, 1979 telephone call from Claimant, the electrical foreman promptly recorded in the layoff book that Claimant was hunting. The Carrier did prove Claimant violated Rule 810.

While the Carrier could consider the Claimant's prior discipline record in assessing the penalty, dismissal is both excessive and unduly harsh in this case. After carefully evaluating the gravity of the offense as well as Claimant's past record, we shall reduce the discipline to a suspension measured by the time Claimant has spent out of service. Claimant shall be reinstated without back pay.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of June, 1982.