

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

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

Dispute: Claim of Employees:

1. That under the current Agreement Machinist M. Williams (hereinafter referred to as Claimant) was improperly dismissed from the service of the Carrier on July 12, 1979.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of dismissal to date of restoration to service.

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 Williams entered the service of the Carrier on February 1, 1971. His employment as a Machinist was terminated on July 12, 1979 for alleged violation of Rule 810 of the Carrier's General Rules and Regulations after a formal hearing on June 22, 1979 to develop the facts and to place responsibility, if any, in connection with Claimant's absence from duty beginning March 1, 1979, through May 18, 1979, during which time Claimant missed 57 working days.

Rule 810 provides in pertinent part:

"Employees ... must not absent themselves from their employment without proper authority. They must not engage in other business which interferes with their performance of service with the Company unless advance written permission is obtained from the proper officer ..."

A current copy of the General Rules and Regulations were posted and accessible for all employes to read. Claimant admittedly was familiar with Rule 810.

Claimant submitted written Request for Leave of Absence (Form C.S. 2696), pursuant to Rule 24 of the Motive Power and Car Departments Agreement, which provides:

"If requirements of the service will permit, employes will, on request, be granted leave of absence, not exceeding ninety (90) days, with privilege of renewal. An employee absent on leave, who engages in other employment, will lose his seniority, unless other provisions are made by the proper officials and committee representing his craft.

Denial of a reasonable amount of leave (service permitting), or failure to promptly handle requests for leave, account sickness or a business matter of importance to the employee, is an improper practice and may be handled as unjust treatment, under this Agreement."

Claimant's Form C.S. 2696 requested leave of absence (LOA) from February 26, 1979 to May 26, 1979 on account of "family problems out of state". The printed form has space for the signatures of (1) the Immediate Supervisor, (2) the Superintendent, Division Engineer, Master Mechanic, or Department Head, and (3) the Division, Department, Etc. The printed form shows that the four copies of that completed form are to be sent to the employee involved, Personnel Services - SF, the Supervisor, and the Timekeeper.

Claimant submitted his signed LOA request form personally to his immediate supervisor, Machinist Foreman Gordon Fetterly, at 8:00 p.m. on February 27, 1979. On that date Claimant was scheduled to work the 3:00 p.m. to 11:00 p.m. shift at the Carrier's Los Angeles Diesel Shop.

Fetterly testified that at the time he received the LOA request form he told Claimant that he "would submit it for approval". Soon thereafter, Fetterly handed the request, unsigned by him, to his immediate second shift supervisor, General Foreman I. M. Sutton.

Fetterly did not recommend approval of Claimant's LOA request because Claimant worked in the M-40 cycle area where there was a heavy work load and Fetterly believed that he needed every man there to make the schedules that had been set for him. However, Fetterly did not advise Claimant of this at the time he accepted the LOA request form from Claimant because, according to Fetterly, he had to give the matter some consideration and Claimant was on the shift for only about five minutes on February 27.

Similarly, General Foreman Sutton did not approve or sign Claimant's LOA request form for the reason, stated at the formal hearing in June, 1979, that "we have contracted with the machinist to work forty hours a week, and Mr. Williams worked in the M-40 cycle area where it is vitally important that every man show up and does his job, keep the program going, and keep production going." Sutton believed that Claimant's absence would have cut production.

Sutton, who was not authorized to approve LOAs in excess of twenty-nine days, placed the subject request form in an outgoing mail box on his desk for later delivery, by himself, to the Assistant Plant Manager in the main office. The Assistant Plant Manager and the Plant Manager orally advised Sutton that Claimant's LOA request would not be approved. In turn, Sutton orally notified Fetterly of that fact.

Claimant admitted at the formal hearing in June, 1979 that his immediate supervisor, Fetterly, "did not say one way or the other whether it (the requested LOA) was going to be approved," and he did not know, as of the time he absented himself from work, whether his requested LOA was approved.

Indeed, when Claimant briefly spoke to Fetterly about the requested LOA, and explained that he had to leave the state because of family problems, Fetterly advised Claimant that the matter was going to take time for processing. Claimant admittedly told Fetterly then that he had to leave immediately--and that is what he did.

On or about March 6, 1979, Claimant had his wife contact Fetterly to determine whether the LOA request was approved. Fetterly told Claimant's wife that the requested leave was disapproved. Although Claimant then knew that he was absent from work without authorization, Claimant remained away from work through May 18, 1979, - without any contact with Carrier management - because as he viewed the situation he had no choice in the matter. He had to remain away from work and out of state attending to his family problems with or without authorized LOA.

Claimant returned to work on May 21, 1979 without ever offering any reason for his unauthorized absence other than "family problems out of state". On that date, he was cited for the formal hearing held on June 22, 1979.

Claimant had requested and had been granted a leave of absence during the early years of his employment with the Carrier. At that time he had taken his request for Leave of Absence to General Foreman Sutton, and was made aware of the procedure to follow in the process of securing an authorized LOA.

Claimant's record of absenteeism with the Carrier is not a favorable one. In 1974 and 1975 two memoranda were placed in his record regarding educational talks pertaining to Rule 810 because of absences from his assigned working area and continued tardiness. In June, 1978 Claimant had been dismissed under Rules 810 and "A", for being away from his duty post with alcoholic beverage in his possession. He had been reinstated in November, 1978 on a leniency basis. On February 18, 1979, he received 60 demerits for irregular attendance from November, 1978 through February, 1979 in violation of Rule 810.

It is the position of the employees in this case that the Carrier was guilty of "shoddy handling" of the Claimant's leave request; that the failure on the part of management to communicate with Claimant was the primary cause of the allegation that Claimant violated Rule 810; that Claimant fully explained to his supervisor his reasons for wanting a LOA which were valid and never questioned by management; that Fetterly misled Claimant by giving the impression

that the immediate supervisor approved the leave; that Fetterly and Sutton should have told Claimant they had no intention of recommending or approving the LOA; that the leave request was improperly ignored and shunted to a filing cabinet; that Claimant submitted his request for leave in good faith, and that the Carrier had an obligation to process the request in good faith, but that the Carrier's handling of the request was an improper practice as defined by Rule 24 and represented unjust treatment towards Claimant; that the Carrier failed in its duty to communicate denial of Claimant's LOA on the basis of service requirements due to the fact that service requirements were such that no emergency existed which would have precluded granting of a leave; and that management chooses to ignore the leave provisions of Rule 24 and to not grant LOAs for any cause due to a maintenance system which places on management the obligation to meet a monthly production quota, with failure to meet that quota bringing reprimands from superiors.

These bases for the position of the employees are unpersuasive to the Board, - primarily because to the extent they are with significance factually unsupported in the record of this case.

By the time action on the request was to be taken by an official authorized to approve or disapprove it, Claimant had knowingly absented himself without authorization and his whereabouts were unknown to management or the Union Committeemen. When Claimant learned on or about March 6, 1979, that his request was not approved, through the telephone conversation between Claimant's wife and Claimant's immediate supervisor, Claimant continued his absence from work without authorization and without further explanation to the Carrier of the need to be absent and without inquiry as to whether the requirements of the service would permit approval of any part of the requested leave.

Under the circumstances, the Board does not find that Claimant properly processed his request for leave or acted in good faith, and it does not find that the Carrier handled the request improperly or in a manner constituting an improper practice under Rule 24 or unjustly treated Claimant in light of Claimant's conduct.

Claimant's violation of Rule 810 before such time as management could reasonably be expected to act on the requested leave is controlling in this case.

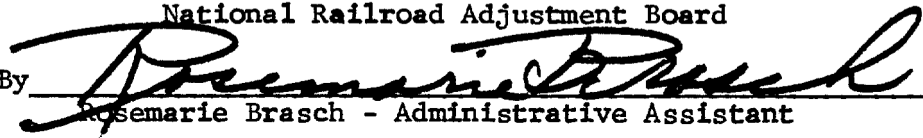
Claimant's unauthorized leave is determined to be just cause to support his dismissal from employment of the Carrier. Claimant's past violations of Rule 810 serve as aggravating circumstances in support of the propriety of the dismissal action.

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 26th day of January, 1983.