

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

Dispute: Claim of Employees:

1. That under the current Agreement Machinist E. E. Evans (hereinafter referred to as Claimant) was improperly dismissed from service on October 26, 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 E. E. Evans was employed by Carrier as a machinist at its Los Angeles Diesel Shop with seniority date of May 25, 1977. He was cited for formal hearing by letter dated July 30, 1979 alleging possible violation of Carrier's General Rules and Regulations, Rule 810 due to irregular attendance from May 1, 1979 through July 15, 1979.

The formal hearing was held on August 31, 1979. Claimant was notified by letter dated October 26, 1979 of his dismissal from the Carrier's service because evidence adduced at the formal hearing established his responsibility for irregular attendance as charged, which conduct violated the following quoted portions of Rule 810:

"Employes must report for duty at the prescribed time ... they must not absent themselves from their employment without proper authority ... Continued failure by employes to protect their employment shall be sufficient cause for dismissal..."

The Organization effected a claim for reinstatement, pay and unimpaired seniority on behalf of Claimant and appeal from declination thereof pursuant to the controlling agreement up to and with the highest Carrier Officer designated to handle such matters before moving the dispute to this Board.

It is the position of Employees that the evidence adduced at the formal hearing does not reasonably support dismissal action inasmuch as: 1) many of Claimant's absences were due to illness and Claimant properly followed provisions of the Agreement in advising the Carrier of such absences; 2) Claimant voluntarily enrolled in a Carrier sponsored program for the successful purpose of correcting the problem causing his illness; 3) at the time Claimant was cited for the formal hearing he had corrected his attendance record, and by the date of dismissal his attendance record was equally as good as that of any other Carrier employe; 4) the circumstances warranted corrective action, rather than punishment or dismissal, but Carrier took no action to counsel Claimant except to suggest that he seek assistance from the Carrier Assistance Program Counselor Walsh, which Claimant promptly did.

It is the further position of the Employees that Carrier used the Assistance Program as a form of entrapment in suggesting that Claimant voluntarily seek assistance for his problem and in then utilizing that information to show an admission on Claimant's part of the existence of a problem to justify dismissal action. Indeed, dismissal of an employe who has the courage to overcome a personal problem is repugnant to any reasonable sense of fairness.

Finally, it is the position of the Employees that the Carrier's delay of fifty-six (56) days following the formal hearing before taking action thereon was grossly unfair and cruel to Claimant, was a form of disparate treatment since Carrier had never before delayed its decision in a discipline matter, and was such a departure from long-established practices in rendering decisions as to constitute an abandonment of the matter.

It is the Carrier's position that the charge against Claimant was established by substantial evidence in the hearing record wherein Claimant admitted that his absences were due to alcohol problems and there was no showing of successful rehabilitation through the Employees' Assistance Program. In fact, Claimant did not join the Employee Assistance Program to seek help until he received Carrier's July 30 notice of hearing. Carrier believes Claimant's use of the Program was merely to forestall a dismissal and/or establish leverage in the appeals process.

The Carrier asserts that Claimant had a duty to be in regular attendance, but proved himself to be an unreliable employe, whose excessive absenteeism and absence without proper authority in violation of Rule 810 persisted even after he had been talked to in the matter by the Carrier.

The Carrier contends that the delay in assessing discipline was due to a heavy backlog of hearing cases at the time and a major reorganization of the Mechanical Department functions and its supervisors. Because Claimant was not withheld from service pending the result of the formal hearing, he suffered no monetary loss. In any event, Carrier did not abandon the matter and the delay in assessing discipline does no violence to the Agreement and does not constitute procedural error.

Rule 25 of the controlling Agreement provides:

"(a) An employe detained from work account sickness or for other cause, shall notify his foreman as early as possible. When returning to work he shall give the foreman in charge sufficient notice (at least 8 hours) so that proper arrangements may be made.

(b) If an employe is unavoidable kept from work, he will not be unjustly discriminated against."

The evidence in the record of this case shows that Claimant was absent without notification to the Company during the period in question on the following dates: May 1, 2, 6, 7, 20, 21, and 27; June 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30; and July 1, 2, 3, 10, 11, 14, and 15. Further, Claimant worked partial days, coming to work late, on the following dates: May 16, 19, 23, and 27; and July 7 and 8. On May 22 and 26, and June 4, Claimant called in sick and was excused for those absences.

Claimant's only explanation for his inability to fulfill his attendance obligation to the Carrier was based on an alcohol problem and lateness in bus transportation from Pomona to Los Angeles. He did not commence participating in the Carrier's Rehabilitation Program until after receiving the charging letter. He claimed that after that time his attendance record vastly improved, which statement was not contradicted in the record of the case.

The Organization made formal objection to certain contentions contained in the Carrier's Submission on the ground that those matters had not been a subject of correspondence or discussion on the property and were not supported in the hearing record. The Board has carefully considered those objections and omitted the objected-to matters in weighing the merits of this dispute.

The Board finds that the charge that Claimant violated Rule 810 has been clearly established in the record of this case. Further, that record reveals that Claimant understood his attendance obligations to the Carrier, but that he repeatedly failed to take responsibility to fulfill the basic obligation of every employe to be in reasonable regular attendance to perform the duties for which he was hired.

Even when Claimant showed for work, he frequently did so in a tardy manner, which manifests a continuing disregard for his obligations to the Carrier when he obviously was not suffering disability due to alcoholism. The fact that Claimant's wages were docked when he was tardy in no way constituted a penalty which would limit consideration of those incidents of lateness by the Carrier in determining whether Claimant should be dismissed for violating Rule 810 as charged.

The Carrier's delay in imposing discipline following the hearing is not found violative of the letter of the Agreement and is not a procedural error to warrant overturn of the dismissal action. There is no reasonable inference to be drawn from the circumstances to the effect that Claimant was injured in any way by the delay.

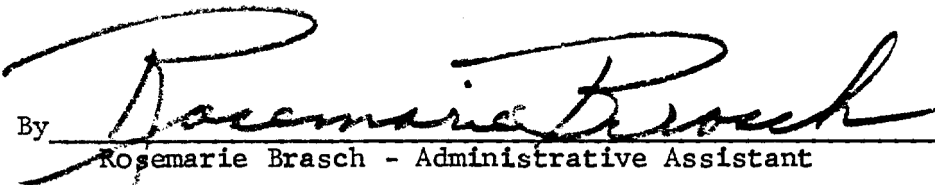
Although the Carrier has suggested that Claimant's failure to participate in the Employee Rehabilitation Program until the time when he was charged with excessive absenteeism is but subterfuge, the Board need not draw the same conclusion to find that Claimant's wrongdoing, as charged and found as fact, warranted dismissal action. Clearly, Claimant's record of absences during the period in question constituted him a serious liability to the Carrier which, under the letter and spirit of the controlling agreement, the Carrier was not obligated to tolerate. Given these circumstances, the dismissal action must stand.

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 9th day of February, 1983.