

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician S. M. Basinger was unjustly treated when he was suspended from service for a period of thirty (30) days on January 31, 1979, following investigation for alleged violation of portions of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation occurring on January 9, 1979.
2. That accordingly, the Carrier be ordered to:
 - (a) Compensate the aforesaid employee for all time lost during the thirty-day suspension and with payment of six percent interest added thereto.
 - (b) Pay employee's group medical insurance contributions, including group medical disability, dental, dependent's hospital, surgical and medical, and death benefit premiums, and railroad retirement contributions for all time that the aforesaid employee was held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employee.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 S. M. Bassinger began his employ as an electrician with the Carrier on November 11, 1974.

Claimant was absent from work for personal reasons on January 8, 9 and 10, 1979. He notified the Carrier that he would be absent from work, and he received authorization for his absences, on January 8 and 10, 1979. However, Claimant failed to call in on January 9, 1979. Further, he was tardy in arriving for work on January 11 and 12, 1979.

By written notice dated January 15, 1979, Claimant was advised of the time and place for a formal hearing in connection with his alleged failure to protect his employment on January 9, 11 and 12, 1979, which conduct might violate Rule 810 of the Carrier's General Rules and Regulations.

The referenced portions of Rule 810 read:

"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."

Following a formal hearing on January 25, 1979, Claimant was advised in writing that based on the evidence adduced at the hearing, his responsibility in connection with his failure to properly protect his employment on January 9, 1979 had been established; his conduct constituted violation of the referenced portions of Rule 810; and for such violation Claimant was suspended from duty for a period of thirty days dating from January 31, 1979 through March 1, 1979.

The disciplinary suspension was appealed through all necessary steps prior to the instant claim coming before this Board. At all steps the remedy sought was that set forth above.

The record transcript in this case indicates that Claimant admitted that he failed to call in and notify the Company of his absence on January 9, 1979, and that his failure to protect his employment on that date was for personal business which he did not care to relate. Additionally, Claimant's tardiness of 45 minutes on January 11, 1979 and of one hour on January 12, 1979 without notification to the Carrier was for personal business which he did not wish to explain. However, the disciplinary suspension imposed on Claimant was for his failure to properly protect his employment on January 9, 1979 only.

In his summary at the formal hearing, Claimant recognized that he had personal problems of a continuing nature which had affected his work record over several months, but he again indicated no desire to explain the nature of his personal problem.

It is the position of the Employees that the Carrier has not established cause for the unjust suspension from service depriving Claimant of twenty-two work days. Further, it is asserted that Claimant was obviously absent for personal and/or family problems of considerable gravity simply too painfully private to be able to discuss at the formal hearing. Indeed, it is contended by the Employees that Claimant was attempting to protect his employment when he absented himself on January 9, 1979.

It is the position of the Carrier that Claimant's defense of "personal business" is totally insufficient for the Carrier to make any determination concerning Claimant's absence. By withholding information at the formal hearing, Claimant acted at his peril.

The Carrier notes that it was necessary to counsel Claimant in relation to his conformity with Rule 810 in May and December, 1978. These efforts to achieve self-discipline in Claimant and alert Claimant to the importance of protecting his employment by regular attendance had not effected the intended purpose. Consequently, a more serious form of discipline was necessary and reasonable under the circumstances.

It is the opinion of this Board that the Carrier has shown compassion for Claimant's "personal problems" in excusing Claimant on those days during the week commencing January 8, 1979 when Claimant gave timely notification of his inability to report for work. Understandably, the Carrier has "problems" of its own whenever employees scheduled to perform certain functions are unable to meet their work obligations, but reason dictates that some accommodation be made by both parties when confronted with events preventing total fulfillment of one's work obligations.

On January 9, 1979 Claimant not only failed in his duty to the Carrier to perform his job functions, he also failed to give notification to the Carrier of his inability to perform those functions. There was absolutely no showing of any reason for the latter failure. "Personal problems" are seldom such as to prevent giving one's employer notice of inability to report for work, and if such occurs that employee has no reason whatsoever for not explaining fully the event preventing the notification.

Further, this Board has indicated in earlier cases that employees must appreciate the function of management in having to determine what discipline, if any, shall be imposed upon an employee who fails to protect his employment, as Claimant failed to do on January 9, 1979. To permit management to properly exercise discretion in such a situation, there is a clear duty on the employee to provide the Carrier with such information as is reasonably necessary for management to make a reasoned judgment in the matter. When, for whatever reason, an employee refuses to explain the nature of his "personal problem", that employee must understand that management need not give him the benefit of any doubt. The Carrier cannot be expected to act on mere speculation, and if it is left to do so, the employee has little or no cause for complaint when some discipline is imposed upon him for his misconduct.

At the same time, management cannot use an employee's unexplained absence as an opportunity to impose an unduly harsh punishment on the offender. The discipline assessed must bear some relationship not only to the nature of the offense but also to the overall work and disciplinary record of the offender.

This Board recognizes that management may discipline within a reasonable range of disciplinary action, but where the discipline is excessive and unreasonable, the Board will reduce the discipline and fashion an appropriate remedy. Here, the disciplinary suspension involving twenty-two (22) work days during a period of approximately one calendar month is found unconscionable for Claimant's offense on January 9, 1979, in light of Claimant's total record.

Consequently, the disciplinary suspension shall be reduced so as to fall within a reasonable range of discipline under all circumstances.

In fashioning an appropriate remedial award the Board has in mind Rule 39 of the current Agreement that reads, in part:

"If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The imposed suspension in this case is found to have been unjustly excessive, although some disciplinary suspension was warranted.

The Carrier is ordered to reduce the disciplinary suspension to seven (7) working days and to compensate Claimant for all wages lost after the seventh work day of the suspension through March 1, 1979, less interim earnings, if any, that Claimant realized during the period of the excessive disciplinary suspension which Claimant would not have received except for the suspension.

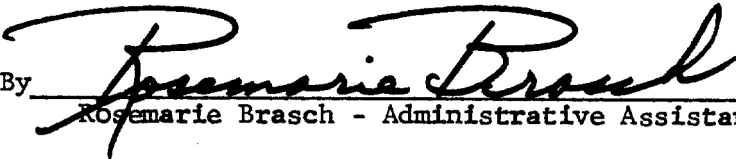
A W A R D

Claim sustained in accordance with the Findings.

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 13th day of April, 1983.