

A M E N D E D

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9436
Docket No. 9016
2-SPT-FO-'83

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 Firemen and Oilers
 { Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler M. R. Mitchell, was unjustly dismissed from the service of the Carrier on June 27, 1979, following a hearing held on June 21, 1979.
2. That accordingly, the Carrier be ordered to make the aforementioned M. R. Mitchell, whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law and compensated for all lost wages. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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 M. R. Mitchell was employed by the Carrier on August 9, 1977. At the time the instant dispute arose in 1979, Claimant was working as a Laborer.

On June 5, 1979 Carrier notified Claimant by certified mail to be present at a time and place certain on June 21, 1979 for a formal hearing in connection with Claimant's alleged continued failure to protect his employment on May 16, 1979 through June 5, 1979, involving possible violation of Rule 810 of the Carrier's General Rules and Regulations.

Rule 810 in pertinent part reads: "Continued failure by employes to protect their employment shall be sufficient cause for dismissal." The formal hearing was held as scheduled on June 21, 1979 in Claimant's absence, but with Local Chairman John Parker, Vice Local Chairman R. Dates, and Committeeman T. Gomez, of the Firemen and Oilers representing Claimant throughout the entire hearing.

General Foreman E. D. Thomson conducted the hearing. The record of that hearing establishes that the Carrier's General Rules and Regulations, including the portion of Rule 810 quoted above, were posted throughout the Carrier's property; that Claimant had absented himself without proper authority from the employ of Carrier during the period May 16, 1979 through June 5, 1979; and that the certified letter notifying Claimant of the formal hearing had been delivered on two separate occasions, at which time Claimant refused to accept or sign for the certified letter.

By letter dated June 27, 1979 Work Manager J. R. Allen notified Claimant that evidence adduced at the formal hearing established his responsibility in connection with his alleged continued failure to protect his employment as charged. Consequently, Claimant was notified of his dismissal from the Carrier's service effective June 27, 1979.

Subsequently, Local Chairman John H. Parker filed an initial claim on behalf of Claimant, contending that the Carrier had failed at the formal hearing to produce the necessary evidence that would prove that the accused was notified of the June 21, 1979 formal hearing in violation of Rule 33 of the Firemen and Oilers' Agreement.

Rule 33 states:

"DISCIPLINE-SUSPENSION-DISMISSAL .

At a reasonable time prior to the hearing such employe shall in writing be apprised of the precise charge against him..."

Local Chairman Parker contended that the discipline assessed against Claimant was "excessive and unjust". There was also a prayer for a reinstatement of Claimant and a make whole remedy. That claim was properly processed through all requisite steps and is properly before this Board.

The claim is determined by this Board to be completely without merit. Clearly, Claimant totally ignored not only his obligations under the basic bargain with the Carrier to perform the duties for which he was hired, but has frustrated the process established to protect his rights.

Implicit in every employment relationship is a duty of good faith and fair dealing. Here, the Carrier has made every reasonable effort to meet its obligations to Claimant, but Claimant has failed in his employment duties without any known justification and without any effort to defend against charges that warranted his dismissal from employment.

A W A R D

Claim denied.

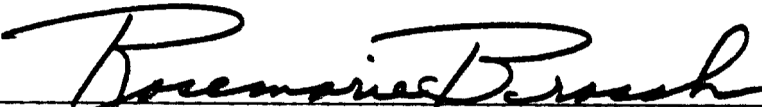
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of April, 1983.