

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister 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 N. P. Kalfountzos was unjustly treated when he was dismissed from service on February 28, 1980, following investigation for alleged violation of portions of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring on February 5, 1980, at approximately 5:30 p.m. to 6:00 p.m.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Restore Electrician N. P. Kalfountzos to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages including interest at the rate of six percent (6%) per annum.

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.

The Claimant here, Electrician N. P. Kalfountzos, was dismissed from service on February 28, 1980, following an investigation involving violation of Rule 810, which states:

"Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority."

The Organization's position is the dismissal was unjust because the Carrier's actions were not supported by the record. It is not a violation of Rule 810

to leave your post and go to the bathroom nor is it necessary to obtain such permission. The Organization asserts the Claimant simply was not guilty of the charges.

The record discloses sharply divergent testimony. Three Carrier witnesses place the Claimant in a locker room sitting on a toilet reading a newspaper with his trousers in an up position. The Claimant denied any remembrance of reading a newspaper and asserted he was actually using the toilet facilities. As repeatedly stated by this Board, it is not our function to resolve conflicts in testimony. The credibility of witnesses and the weight given to their testimonies is reserved to the trier of facts. Herein, this Board's review results in a finding there was substantial evidence to support the Carrier's action. There is no question concerning the conduct at the hearing, which clearly provided the Claimant with every opportunity to present his position. There being no factual showing of arbitrary or capricious action, this Board sustains the Carrier's 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 13th day of July, 1983.