

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, Communications Department Equipment Installer L. N. Collet was unjustly treated when he was dismissed from service on December 6, 1978, for alleged violation of portions of Rule M-810 on November 21, 1978, and portions of Rule 801 on November 22, 1978, of the General Rules and Regulations of the Southern Pacific Transportation Company.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore Claimant Mr. L. N. Collet to service with all rights unimpaired including service and seniority, loss of wages, vacation payment of hospital, medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of six percent 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.

Claimant L. N. Collet entered Carrier's service as Cable Splicer on February 17, 1969. He displaced as a District Lineman, same craft, on January 21, 1975.

It is the position of the Employees that Claimant was unjustly dismissed from the service inasmuch as the record of this case reveals that the hearing officer, Mr. Deckert, had reasons to be biased against Claimant (as noticed by the manner in which he conducted the formal hearing); that Claimant was not guilty of the charges against him; that Claimant's dismissal was arbitrary and capricious and an abuse of discretion; and that Rule 27 was violated by the Carrier.

Rule 27 reads:

"No employe shall be disciplined or dismissed without a fair hearing by the proper officer of the Company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe shall in writing, be apprised of the precise charge against him, be given reasonable opportunity to secure the presence of necessary witnesses, and shall have the right to be represented as provided for in Rule 26. 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. Stenographic report of hearing will be taken if requested and employe's representative shall be furnished with a copy."

The position of the Employees emphasizes: (1) it was permissible for Claimant to report off with either Mr. Romanshek in Oakland or with Mr. Butler in Sacramento; (2) Claimant did report off sick properly in Sacramento on November 21, 1978 when he called the Wire Chief who logged him in as "off sick" so that Claimant was not absent without proper authority on November 21, 1978 as charged; (3) Claimant rightfully believed that it was senseless to continue driving to Oakland each day for training classes when conduct of the supervisors made it clear that the training was a mere "charade" and it was an exercise in futility to continue the training; and (4) under the circumstances Claimant's failure or refusal to report to training was not insubordination.

The Carrier submits that there is substantial evidence within the hearing record of Claimant's responsibility for purposefully absenting himself without authority on November 21, 1978 and refusing to report for work on November 22, 1978 as instructed, when Claimant knew full well the possible consequences of his misconduct. If Claimant believed he was not being afforded proper instruction and training and that the Carrier was out to disqualify him, he should have followed the proper procedure to complain through channels, not take matters into his own hands in violation of rules known to him to be cause for dismissal. Claimant's blatant action justified permanent dismissal and his claim should be denied.

It is the determination of a majority of this Board that the instant claim must be denied.

The assertion of the Employees that the Hearing Officer, Mr. Deckert, had reasons to be biased against Claimant is not supported in any fact in the record of this case. The manner in which Mr. Deckert conducted the formal hearing below in no way manifests bias or prejudice. Further, as has been held on other occasions by this Board, objections to the way in which a hearing is conducted must be made at the hearing or else the right to object is waived. See, for example, Second Division Award No. 7955, Weiss; and Second Division Award No. 8145, Dennis. Here, the record contains no indication that Claimant was not given a fair hearing or that the dismissal action was arbitrary and capricious or an abuse of managerial discretion.

Rule M-810 of the Rules and Regulations for the Maintenance of Way and Structures of the Carrier reads, in part: "Employees must report for duty at the prescribed time and place ... They must not absent themselves from their employment without proper authority." Rule 801 of the General Regulations of the Carrier provides, in part: "Employees will not be retained in service who are ... insubordinate, ..."

There is substantial evidence in the hearing record that Claimant knowingly and purposely absented himself from his place of employment without proper authority on November 21, 1978 in violation of Rule M-810. On that date, Claimant's assignment was to be engaged in a teletype repair course in Oakland under the supervision of W. F. Romanshek. Claimant's normal work station was at Sacramento under the supervision of W. B. Butler. Admittedly, Claimant did not request permission from either of these supervisors to be absent on November 21, 1978.

Rather than report at Oakland at 7:00 a.m. on November 21, 1978, as Claimant knew he should do, Claimant drove to his home in Sacramento without making any effort to obtain permission to be absent from his work assignment. In mid-morning of that date he telephoned to the Sacramento office and advised the Manager Wire Chief, W. J. Petrie, that he was not coming in to work that day, and he asked whether Butler was in. When Petrie advised that Butler was there and asked whether Claimant wanted to talk to him, Claimant said he did not want to talk to Butler. Claimant knew that Butler had instructed him to report to Oakland for training on each of the work days during the week commencing Monday, November 20, 1978, except for Thursday, Thanksgiving Day. Clearly, Claimant had opportunity at that time to explain his situation and to obtain belated authorization for his absence due to sickness if, in fact, he was ill. Claimant made no efforts in this regard.

It was Mr. Petrie who believed he should obtain a reason for Claimant's absence on November 21, 1978, and who asked Claimant whether he was sick. Under the circumstances presented in the record, it is fair to conclude that Claimant's call to the Sacramento office on November 21, 1978 was merely to advise that he was not going to be in to work. The call was not made to gain authorization for absence or to advise that he was ill. This latter fact is evidenced in Claimant's discussion with his supervisor, Butler, later that morning.

Mr. Butler testified that when he learned from Mr. Romanshek that Claimant had not appeared for training on November 21, 1978, that he telephoned to Claimant's home at 10:40 a.m. Claimant answered the phone and Butler asked why Claimant had left his assignment at Oakland without proper authority. Claimant did not answer then, or at any other time during the conversation, that his absence was because of illness. Claimant stated that he was "tired of the charade". Butler then advised Claimant that he was in possible violation of the rules. Claimant's response was merely, "Ya, o.k." Had the Claimant been truly sick, it is reasonable to conclude that he would have expressed that fact to his supervisor rather than leave the supervisor with a reasonable belief that Claimant was neither concerned about getting proper authority for absence from work nor the fact that his conduct violated the Carrier's rules.

Butler next talked to Claimant when the latter called him at approximately 7:05 a.m. the next day, November 22, 1978. At that time Butler instructed Claimant to report to Oakland for training, as Butler had earlier instructed Claimant. Claimant's response was "No way". Again Butler advised Claimant that he was in possible violation of the rules and suggested that he come to the supervisor's office to discuss the problem, which Claimant did. Butler asked Claimant for his reason for not reporting to Oakland, and the latter stated that even if Butler handcuffed him, he would struggle like hell to keep from going back, but at no time did Claimant give a reason for not reporting to Oakland as he had been instructed to do. Butler than advised Claimant again that he was in possible violation of the rules, and Claimant asked why Butler couldn't just fire him outright. Butler indicated that no such action could be taken without an investigation to develop the factual basis for discharge action. This conversation was overheard by Outside Plant Supervisor James W. Buckley, who testified at the formal hearing confirming Butler's instruction to Claimant to report to Oakland and Claimant's refusal to do so in the manner described by Butler.

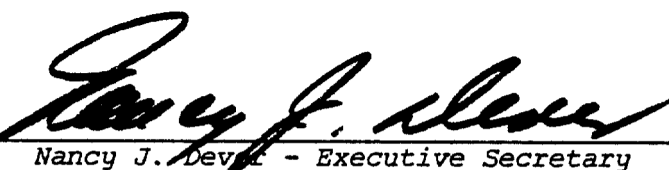
Claimant admits that Butler instructed him to report to Oakland on November 22, 1978 and that Claimant did not follow that instruction. Claimant provided no valid reason for refusing to comply with the work order of his supervisor. Through his familiarity with the rules, Claimant knew that he was placing his job in jeopardy because of his insubordinate conduct. He cannot now be heard to complain that his dismissal from service was arbitrary, capricious or an abuse of managerial discretion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTESTE:


Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1983.