

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( International Association of Machinists and Aerospace Workers  
( Southern Pacific Transportation Company  
(Western Lines)

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist S. M. Overstreet (hereinafter referred to as Claimant) on September 17, 1980.

2. That the Carrier be ordered to compensate Claimant for all wage loss from September 17, 1980, to April 6, 1981, on which date he was restored to service without prejudice to claim for wage loss.

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 employes 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.

In late July, 1980 the Claimant, Machinist S. M. Overstreet was granted a change of vacation and leave of absence in order to see his father, who was seriously ill. Mr. Overstreet's leave of absence was granted through August 10, 1980. He did not return to duty on August 11, 1980, as scheduled, nor did he notify the Carrier that an extension of his leave of absence was desired or necessary. Mr. Overstreet was absent without leave on August 11, 12, 13, 14, 15, 18, 19, 20, 21, 22 and 25. A certified letter dated August 25, 1980 was sent by the Carrier to Mr. Overstreet's current address of record with the Carrier in West Sacramento, California. The letter contained a notification that a formal hearing would be held on September 9, 1980 concerning his alleged absence from duty without proper authority on the dates set forth above which the Carrier stated may involve violation of Rule 810 of the General Rules.

The certified letter was to be delivered to the addressee only and was not picked up by Mr. Overstreet at the West Sacramento address. At the start of the September 9, 1980 hearing, the Acting Local Chairman sought a postponement of the formal hearing. After the Conducting Officer determined from the Acting Local Chairman that Mr. Overstreet had not contacted the Acting Local Chairman or other members of the Union seeking a postponement, the Conducting Officer determined to go ahead with the hearing. The General Foreman testified at the hearing that he was aware that Mr. Overstreet's father was ill in the East. And the record disclosed that as of September 9, 1980 neither Mr. Overstreet nor any member of his family had contacted the Carrier to seek an extension of the leave which had expired after August 10, 1980. The Local Chairman had been on vacation from August 25, 1980 through August 29, 1980, and had been on a leave of absence from September 1, 1980 through September 12, 1980. The Local Chairman as set forth in his letter dated November 5, 1980, had taken an active part in the obtaining of Mr. Overstreet's leave and was aware of the reason for the leave. On September 17, 1980, Mr. Overstreet was dismissed from the service of the Carrier as a result of the September 9, 1980 formal hearing. On September 29, 1980, Mr. Overstreet reported for duty and was advised by the Carrier that he had been dismissed from service. On November 5, 1980 the Local Chairman sent a detailed letter to the Works Manager explaining how and why he had sought and obtained a leave of absence for Mr. Overstreet. He submitted copies of two different newspaper notices of the death in Joplin, Missouri of Mr. Overstreet's father on September 15, 1980, with burial on September 20, 1980.

The Carrier's letter of November 7, 1980 reveals that approximately three to four months prior to the incident in question Mr. Overstreet had requested a leave of absence of thirty days, which was granted; and he requested an additional thirty day leave of absence, which was granted by the Carrier by telephone.

We find no contractual violation in the Conducting Officer's refusal to grant a postponement of the formal hearing. Mr. Overstreet's leave of absence expired after August 10, 1980. He did not contact the Carrier to seek an extension of the leave at any time prior to the September 9, 1980 hearing; nor did he contact the Union to seek a postponement of the hearing. It is the employe's obligation to keep a current address with the Carrier. And there was no showing in the record that the Carrier knew Mr. Overstreet's temporary address was in Joplin, Missouri. The record indicates that the Carrier was informed that Mr. Overstreet's father was ill out East. Under the circumstances of record, where the Carrier was informed that an employe's father was ill, and notice of

investigation was not picked up by the employe, and where the employe's record does not otherwise indicate circumstances that would tend to indicate that the employe had abandoned his employment, the Carrier must be reasonably open to consider mitigating facts and circumstances later brought to its attention concerning the employe's failure to protect his assignment. In the instant case the Local Chairman's letter of November 5, 1980, along with the newspaper clipping of Mr. Overstreet's father's death on September 15, 1980 would indicate that mitigating circumstances existed for Mr. Overstreet's failure to return from his leave of absence. While Mr. Overstreet in fact had violated Rule 810 by his failure to contact the Carrier to obtain an extension of his leave of absence, after receipt of the Local Chairman's explanation and documentation, the Carrier's insistence thereafter that the discipline of dismissal was appropriate became untenable. The Carrier was entitled to discipline Mr. Overstreet for failure to contact the Carrier to seek an extension of the leave of absence and the resultant failure to protect his assignment, even under the circumstances of his father being near death. The Union argues that Mr. Overstreet assumed that a leave extension was automatic under the circumstances he was in. However Mr. Overstreet demonstrated by his actions that he knew on a prior occasion several months before the August 1980 situation, that a request was necessary for an extension of a leave of absence; and that such a request could be made and granted by telephone. Certainly where the record does not show that the Claimant or the Organization offered the Carrier an explanation and necessary documentation on the Claimant's situation prior to the November 5, 1980 letter from the Local Chairman, the Carrier had no basis to reconsider its discipline, and discipline up to that point in time, with a reasonable time to verify the documentation, cannot be challenged (that is, in this case up to November 7, 1980, when the Carrier responded to the November 5, 1980 letter). Some discipline beyond that period of time would be appropriate. In any event discipline of more than a thirty day actual suspension for the period of time after November 7, 1980 is excessive.

Mr. Overstreet should have been reinstated with all rights unimpaired as of December 7, 1980. Carrier agreed in conference on March 30, 1981 to return Claimant to service. Mr. Overstreet shall be made whole for his wage loss for the period of time from December 7, 1980 until the date he returned to service on April 6, 1981. The Carrier may deduct outside earnings from the amount owed Mr. Overstreet as hereafter qualified. If Mr. Overstreet maintained a second job prior to his dismissal by the Carrier, the parties shall establish the average number of hours per week worked at the second job for the four month period preceding Mr. Overstreet's 60 day leave of absence. The Carrier shall not deduct on a weekly basis for the period in question the earnings from the so established average number of hours per week worked at a second job, if any, but may deduct on a weekly basis for the period in question the hours over and above the so established average number of hours per week worked at the second job. Periods of less than a week shall be prorated accordingly. If Mr. Overstreet found alternative employment during the period in question other than a previously established "second job", all wages earned at such alternative employment shall be deducted.

Form 1  
Page 4

Award No. 9778  
Docket No. 9530  
2-SP-MA-'84

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
\_\_\_\_\_  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 1st day of February, 1984