

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(District Council 114
(Southern Pacific Transportation Co.

Dispute: Claim of Employees:

- (1) That claimant D. M. Johnson was unjustly dismissed and Carrier failed its burden of proof of charges against claimant.
- (2) That claimant be restored to duty with seniority unimpaired.
- (3) That claimant be compensated by Carrier for all time lost and for all contractual benefits lost as result of unjust dismissal.

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.

Claimant was subject to an investigative hearing under the charge of his "alleged submission of a falsified form, CS 5662 Return-To-Duty Status Form"...which may be in violation of Rule 801".

Rule 801 reads in pertinent part: "Employees will not be retained in service who are...dishonest."

The Board finds that the hearing was conducted in a fair and proper manner.

The Claimant laid off "sick" during his shift on July 29, 1980 and was absent thereafter throughout the month of August. The Carrier received a letter dated August 28, 1980 signed by Richard T. Hoopes, DDS, which stated:

"Darrell Johnson has been released from my care after having his third molars surgically extracted. He may now resume work."

The letter indicated no dates of disability. Following normal procedure in instances where employees are absent because of illness for more than a month, the Carrier requested the Claimant to have a Form 5662 completed by his physician prior to clearance by the Carrier's physician. Claimant submitted such form, but it appeared to be fraudulently filled out. Consultation was held with Dr. Hoopes, whose name appeared on the form. Dr. Hoopes, in a written statement entered at the investigative hearing, denied that the form had been prepared or signed by himself or any of his staff. The form alleged a period of disability from August 7 to August 28, 1980.

Although the Organization questioned the propriety of the use of Dr. Hoopes' written statement at the hearing, the Board does not find its inclusion to be improper. Testimony was given by a Carrier witness as to an interview with Dr. Hoopes and the circumstances of obtaining the statement. The questioned form itself clearly indicates suspicious unprofessional wording and misspelling.

The Claimant testified that he had asked a "friend" to deliver the form to Dr. Hoopes and that he did not review it when it was returned to him. The "friend" was not brought forward by the Claimant as a witness at the hearing.

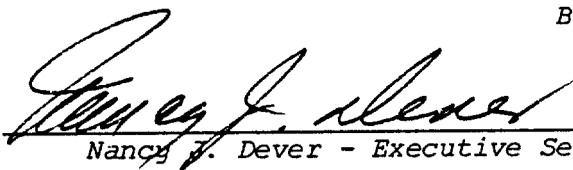
The Carrier found the Claimant's explanation incredible, and the Board has no basis to find otherwise. The resulting falsification, apparently to cover the Claimant's month-long absence, was a serious offense, and there is ample support for the penalty of dismissal.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1984