

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That claimant T. C. Sipes was unjustly dismissed from service by Carrier on December 17, 1981 under extraordinary circumstances unavoidable by claimant.
- (2) That claimant be restored to service with seniority rights unimpaired.
- (3) Compensate claimant for all time lost in addition to an amount of 10% per annum compounded on anniversary date of claim.
- (4) Make claimant whole for all vacation rights.
- (5) Reimburse claimant and/or his dependents for all medical and dental expenses incurred while claimant improperly held out of service.
- (6) Pay to claimants estate whatever benefits claimant has accrued with regards to life insurance for all time claimant held out of service.
- (7) Pay claimant for all contractual holidays.
- (8) Pay claimant for all contractual sick leave.
- (9) Pay claimant for all jury duty and for all other contractual benefits.

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.

Following a formal hearing held on December 4, 1981, the Claimant, a Sheet Metal employee at the Carrier's locomotive Service Facility in Bakersfield, California, was dismissed for violation of Rules 810 and B. These Rules provide as follows:

"Rule 810- Employees must report for duty at the prescribed time and place...They must not absent themselves from their employment without proper authority..."

Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

Rule B- Employees must be conversant with and obey the rules and instructions. If in doubt as to their meaning, they must apply to proper authority for an explanation."

After carefully examining the record the Board concludes that the Claimant failed to protect his job beginning October 16, 1981 through November 22, 1981. He did not work during that period; nor did he have any authority to be absent from his employment.

The Claimant's excuse for not reporting for work on October 21, 1981 was "car trouble." On October 23, 1981, the Claimant did not report for work and did not have permission to be absent although he called the first shift Roundhouse Supervisor on October 22, to say he would be at work on the following day. The Carrier did not hear from the Claimant for the remainder of October, 1981. On November 4, 1981, the Claimant telephoned the Roundhouse Clerk and informed him that he would be at work that night. One hour and ten minutes before the commencement of his shift, Claimant again telephoned the Roundhouse and marked off duty for that night, November 4, 1981. From November 4, 1981 through November 22, 1981 the Claimant did not contact the Carrier to lay off from his assignment.

The Organization contends that the absence of the Claimant between October 16, 1981 and November 22, 1981 is directly caused by the arbitrary and unjust actions of the Carrier on July 4, 1981 and September 23, 1981. The Carrier suspended the Claimant for fifteen (15) days after reporting for duty on July 4, 1981 and refusing to work. Moreover, the Carrier assessed discipline of thirty (30) demerits against the Claimant for sleeping two and one-half (2-1/2) hours beyond the beginning of his shift on September 23, 1981. Suffice it to say, that re-trying the circumstances concerning the past commission of offenses are outside the scope of the instant dispute.

The Board concludes that the Claimant's continued failure to protect his employment between October 16, 1981 and November 22, 1981 during which time he had no authority from the Carrier to be absent constitutes a violation of Rules 810 and B.

The Claimant did not appear at the hearing to present a defense in his behalf. His failure to attend the hearing was at his peril. Review of the record discloses that the hearing was conducted in a fair and impartial manner. As a result, the Board sustains the dismissal of the Claimant.

Form 1
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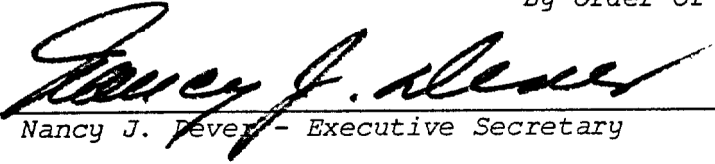
Award No. 9963
Docket No. 9976
2-SP-SMW-'84

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 13th day of June, 1984