

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
(  
( Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That in violation of the current agreement, Firemen and Oiler S. B. Galindo was unjustly dismissed from the service of the Carrier following a formal hearing held on date of November 26, 1979.
2. That accordingly the Carrier be ordered to make the aforementioned S. B. Galindo whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holidays, vacation, health and welfare benefits and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, customs or law, and compensated for all lost wages plus 6% annual interest on all such lost wages.

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, Fireman and Oiler, S. B. Galindo, was employed by Carrier on its Western Lines on February 27, 1979. Prior to that date, Claimant had been employed on Carrier's Eastern Lines in the Maintenance of Way Department.

On August 28, 1979, Claimant was employed as a Fireman and Oiler at Carrier's Sacramento, California Locomotive Works. Claimant requested a leave of absence in order to attend to personal matters in Mexico. Claimant's supervisor, General Foreman T. M. Deverling granted Claimant thirty days leave which was the maximum time the Foreman had authority to grant to Claimant. Claimant's leave of absence commenced on September 1, 1979.

Claimant was due to return to work the first week in October. However, Claimant did not return to work nor did he contact anyone. Inquiries regarding his whereabouts were unsuccessful.

By letter dated November 2, 1979, Claimant was charged with violating Rule 810 of the General Rules and Regulations and was requested to attend a formal hearing on November 16, 1979. Rule 810 states as follows:

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

On the basis of evidence adduced at the hearing, Claimant was held responsible for his continued failure to protect his employment from October 16, 1979 through October 31, 1979 and Claimant was dismissed from service by letter sent by Certified Mail on December 20, 1979.

The Organization's position is that the Carrier's action in dismissing Claimant was arbitrary, capricious and unjust action and an abuse of managerial discretion.

The Organization further contends that the investigation was not a fair and impartial hearing as required by Rule 33 of the controlling agreement because the Organization submits there is no proof that Claimant was notified of the hearing and the charges against him.

Rule 33 states:

"No employee shall be disciplined or dismissed without a fair hearing ... at a reasonable time prior to the hearing such employee shall in writing be apprised of the precise charge against him ..."

The Carrier's position is that the dismissal of Claimant was properly in view of the substantial evidence that Claimant violated Rule 810 of the General Rules and Regulations by failing to return to work after his leave of absence expired on October 1, 1979. General Foreman T. M. Deverling, who is in charge of the shop in which the Claimant worked, testified that he has not heard anything from Claimant since going off on leave on September 1, 1979. The Carrier contends that Claimant's absence for the past four years can lead only to the conclusion that Claimant never intended to return to the Carrier's employ.

The Carrier further submits that the hearing was fair and impartial. In this regard, Carrier argues that Claimant was given all of his rights including proper notice of the specific charges against him. Such notice was sent by Certified Mail on November 2, 1979. Carrier attempted to deliver the notice to the Claimant on November 8, 1979, November 14, 1979, and November 24, 1979. It was mailed to Claimant's address of record and was eventually returned marked "unclaimed".

Despite the fact the claimant could not be found he was represented at the hearing by the duly constituted Local Committee which Committee acquiesced in holding the hearing in the absence of the Claimant.

It is this Board's considered opinion that the Organization's claim must be denied. As was stated by the Second Division in Award No. 6196:

"The precedent is well established that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed. While administration of disciplinary action should not be haphazard or capricious, it is clear that the imposition of discipline is within managerial discretion."

The evidence in this case shows that the Claimant never returned from his 30 day leave of absence, nor notified Carrier of intentions with regard to his employment. Thus, it is clear that Claimant is in violation of Rule 810. Under these circumstances, the Carrier's action in dismissing Claimant was proper. The Claimant need not retain an employe who has been absent without authorization for such a long period of time.

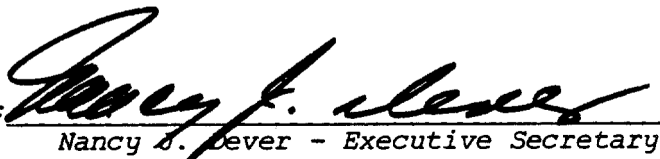
Claimant's argument that the Carrier violated Rule 33 because there is no proof that the Claimant was notified of the charges against him must also fail. The record contains the November 2, 1979 notice which is clearly marked "Certified Mail No. 548231 - Return Receipt Requested - Deliver to Addressee Only." The Carrier has made every effort to locate Claimant. No more can be expected of the Carrier.

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 22nd day of August 1984.