

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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, Mechanical Department Electricians R. V. Abano and J. Alde were unjustly treated when they were dismissed from service on August 11, 1981, following formal investigation for alleged violation of portions of Rules 801 and 802 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violations occurring on June 17, 1981 and June 30, 1981.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Restore Electricians R. V. Abano and J. Alde to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and the loss of wages to include interest at the rate of sixteen percent (16%) 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 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.

Claimants were employed as Electricians, and, at the time of the occurrence giving rise to this dispute, had been in the Carrier's service for less than three years. Following an investigation conducted on July 8, 1981, Claimants were dismissed from the service of the Carrier on August 11, 1981. Claimants Alde and Abano were charged with entering into an altercation with a supervisor in violation of Rules 801 and 802, which state in pertinent part:

"Rule 801 - 'Employees will not be retained in the service who are...dishonest...quarrelsome or otherwise vicious...'

Rule 802 - '...Employees must not enter into altercations while on duty.'"

Claimant Abano was additionally charged with falsifying time for June 17, 1981 on his semi-monthly timecard in violation of the foregoing Rule 801.

It is the position of the Carrier that substantial evidence adduced at a fair and impartial hearing conclusively proved that Claimants on June 30, 1981, were involved in an altercation with their foreman, E. J. Fitkowski, in which Claimant Abano punched the foreman in the face while Claimant Alde held him. Additionally, the Carrier maintains that under all the facts and circumstances of this matter, dismissal was clearly justified.

The Organization contended that sufficient evidence was not adduced to prove the charges; that the Carrier's sole witness to the occurrence charged was unsupported in his testimony by any other witness, and presented less than credible testimony. The Organization asks that this Board consider Employee's Exhibit "H", a petition signed by numerous employees attesting to the unsafe treatment and harrassment experienced at the hands of Supervisor Fitkowski as further evidence of his lack of credibility in the present case. Finally it is contended by the Organization that the discipline administered herein was discriminatory, excessive, arbitrary, capricious and not supported by substantial evidence.

With respect to the credibility of Supervisor Fitkowski's testimony, the Board first finds that the petition submitted by the Organization as Exhibit "H" was properly excluded as irrelevant to the question of whether an altercation took place as charged. Similarly, to the extent that the Organization attempted to introduce evidence concerning prior grievances directed against Supervisor Fitkowski; their relevance is limited to the propensity of the two men and their foreman to act as they did and does not constitute a sufficient basis for overturning the credibility determinations of the hearing officer.

After careful consideration of the evidence on the record, the Board finds that the record contains substantial proof supporting the allegations that Claimants entered into an altercation with Supervisor Fitkowski in his office on June 30, 1981. It is undisputed that the Claimants were in the office alone with the supervisor, that an argument concerning timecards took place, and that Supervisor Fitkowski sustained an injury while in the presence of the Claimants. Carrier witness Foreman Moreno corroborated the testimony of Supervisor Fitkowski that some form of altercation took place in Mr. Fitkowski's office. General Foreman LeBlanc testified that Supervisor Fitkowski related the incident to him immediately afterward, and LeBlanc observed that Fitkowski had indeed been injured. Witnesses presented on behalf of the Claimant observed or overheard only bits and pieces of the incident, and their testimony failed to explain how Supervisor Fitkowski sustained an injury during a meeting with the Claimants. Given this state of the record, there was indeed probative evidence from which

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the hearing officer could legitimately conclude that Supervisor Fitkowski's version of the events was closer to the truth than Claimants' self-serving denials. In our judgment there is no showing of unreasonableness, bias, prejudice or predetermination shown on this record to impeach the determination of the hearing officer that events transpired as essentially described by the supervisor. That being the case, there is substantial evidence to support findings that Claimants attacked their supervisor in violation of Rules 801 and 802. Such conduct clearly cannot be condoned in the workplace, and we find no grounds upon which we should substitute our judgment for Carrier's relative to the penalty imposed. The record is adequate to support the penalty assessed for each Claimant.

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 5th day of September, 1984.