

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

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

Dispute: Claim of Employees:

1. That under the current Agreement Machinist Helper E. M. Dates (hereinafter referred to as Claimant) was improperly dismissed from the service of the Carrier on January 18, 1980.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of dismissal to date of restoration to service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 charges of "alleged dishonesty on November 19, 1979, falsification of time card, and alleged absence without authority on November 29, 30 and December 3, 1979". The rules cited in reference to these charges are as follows:

"Rule 801: Employees will not be retained in the service who are...dishonest...."

"Rule 810: Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. 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."

The Claimant failed to appear at the hearing, although he had received proper notice thereof. The hearing officer did not grant a postponement, as requested by the Organization, because no explanation was available as to the reason for the Claimant's absence. Under this circumstance, the Board does not find that the hearing officer acted improperly.

The record is persuasive that the Claimant marked his time card for eight hours pay for December 19, 1979, although he did not work that day and was questioned concerning this entry by two supervisors and failed to make a change in his pay claim.

As to his absences on November 29-30 and December 3, it appears that the Claimant may well have advised another employee that he was leaving in the middle of the shift on November 29. This, however, is no substitute for contacting a supervisor directly to seek permission to leave. No justification for his absence on the following two work days was provided.

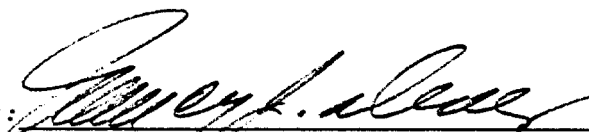
The record of hearing demonstrated to the Carrier the Claimant's guilt of the two charges. The Board has no basis to interfere with the subsequent disciplinary penalty of dismissal from service.

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 24th day of October 1984.