

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 (Western Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Fireman and Oiler J. W. Gobler, was unjustly suspended from the service of the Carrier for 30 days from November 15, 1980 through and including December 14, 1980.
2. That accordingly, the Carrier be ordered to compensate the aforesaid employe at the pro-rata rate of pay for all time lost due to the unjust 30 day suspension.

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 J. W. Gobler, has been employed by the Southern Pacific Transportation Company, hereinafter referred to as the Carrier, since July 1, 1978.

By notice sent on October 13, 1980, Claimant was charged with violating Rule 810 of the Rules and Regulations of the Southern Pacific Transportation Company and was instructed to attend a hearing on October 30, 1980. This charge stems from Claimant's failure to report for duty on September 3, 4, 11, 12, 17, 19, 23, 24, 25, 29, 30, 1980, and October 1, 2, 3, 6, 8, and 9, 1980.

Rule 810, in pertinent part, reads as follows:

"Employees must report for duty at the prescribed time and place ...

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

Following the hearing, Claimant received notice that he was suspended for 30 days. Claimant was allowed to return to duty on December 15, 1980.

The Organization's position is that the Carrier's action in suspending Claimant for 30 days is arbitrary, capricious, and unjust and an abuse of managerial discretion.

The Carrier argues that the evidence which showed that Claimant was either late to work, left work early, or both on 11 days, and that he was absent from his employment on 6 days during the period with which he was charged, supports the action taken with respect to the Claimant by the Carrier.

The Carrier contends that its action of suspending Claimant for 30 days was reasonable and was within the bounds of appropriate managerial discretion. The Carrier submits that it handled Claimant's absenteeism in a progressive manner by counseling and educating the Claimant regarding his pattern of absenteeism and tardiness on three occasions. After all progressive efforts to rectify Claimant's absenteeism and tardiness problems failed, the Carrier determined that a more severe discipline was needed to impress upon the Claimant the need to be a more reliable employee.

This Board, having thoroughly reviewed the record in this case, finds that the Claimant's claim is without merit. The record reveals that Claimant was absent or tardy on all of the dates as charged, as well as on numerous other occasions. Prior to the hearing on these three charges, the Carrier tried to help Claimant improve his attendance record by discussing those problems with him. Since those discussions did not result in any improvement of Claimant's attendance record, the Carrier's action in imposing the 30-day suspension cannot be said to be arbitrary, capricious, or unjust or, in any way, an abuse of managerial discretion.

As stated in Second Division Award 1041:

"It is well settled that the action of a Carrier in discipline cases will not be disturbed unless the Carrier has acted arbitrarily, without just cause, or in bad faith ... Generally, the Board will not substitute its judgment for that of the Carrier on the question of the amount of discipline imposed by the management."

In this case, there is no reason to set aside the discipline imposed by the Carrier for all of the above reasons.

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 31st day of October 1984.