

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 T. Bennett was unjustly dismissed from the service of the Carrier following a formal hearing held on date of May 15, 1981.
2. That accordingly the Carrier be ordered to make the aforementioned T. Bennett whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, 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 T. Bennett, had been employed by the Carrier, Southern Pacific Transportation Company, since August 30, 1978.

At approximately 10 p.m. on April 28, 1981, Claimant called his immediate supervisor, Roundhouse Foreman L. L. Degeest, to request permission to lay off sick that evening. Degeest told Claimant to call Assistant Plant Manager F. S. Altergott to obtain permission to lay off in accordance with a notice posted by Mr. Altergott on March 31, 1981. Mr. Degeest testified that Claimant told him that he was not going to call Mr. Altergott. The Claimant admitted that he did not reach Mr. Altergott to seek permission to lay off. However, Claimant's wife furnished a notarized statement averring that she attempted to reach Mr. Altergott.

On April 30, 1981, Claimant was sent a notice requesting that he appear on May 7, 1981, for a formal hearing regarding his alleged absence from his post of duty on March 20, 27, 28, 31, 1981, and April 1 and 28, 1981, and his alleged refusal to call Mr. F. S. Altergott to obtain permission to lay off on April 28, 1981, as instructed by his immediate supervisor. In connection with these allegations, Claimant was charged with violating Rules 801 and 810 of the Rules and Regulations for the Government of Mechanical Department Employees as contained in Form S-2292-M, General Rules and Regulations of the Southern Pacific Transportation Company.

attendance problems. The Claimant had been in the employment of the Carrier for a little more than two and one-half years when the absences for which he is charged herein commenced. The Carrier states that during that period of time, he had been the recipient of five educational counselings with regard to the provisions of Rule 810 and the need for him to be a reliable employee. During that same period, Claimant was suspended for ten days for being absent without authority. These methods of discipline obviously had no positive effect upon Claimant's attendance record.

In Second Division Award 7348, we held:

"When an employee is so consistently and habitually absent over a long period of time that his employment becomes a serious liability rather than an asset, Carrier is entitled to terminate his service."

Claimant's employment record with the Carrier leaves no doubt that Claimant was more of a liability to Carrier than an asset. Clearly, the Carrier was justified in dismissing Claimant from its service.

This Board finds that the Claimant's procedural argument regarding promptness of his being charged to be totally without merit. The Claimant was cited promptly after the last incident which precipitated the formal charge and hearing. As noted correctly by the Carrier, the charge of "continued failure to protect employment," by its very nature, takes time to develop. The charge would be meaningless if the Carrier could not include past incidences of absenteeism and other violations.

The Claimant's other procedural argument regarding the disallowance of certain answers to questions is also without merit. The record shows that all of the relevant questions were answered.

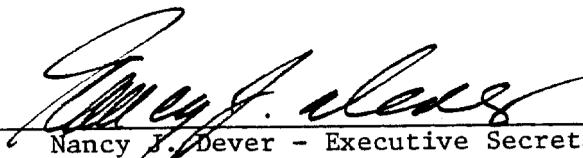
This Board has found, on numerous occasions, that it will not set aside discipline imposed by a Carrier unless it is arbitrary or unjust. In this case, there is no evidence of arbitrary or unjust action taken on the part of the Carrier.

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 31st day of October 1984.

Rule 801 reads in pertinent part:

"Employees will not be retained in the service who are ...
insubordinate ..."

Rule 810 reads:

"Employees ... 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 hearing was postponed at the request of Claimant's representative and
was held on May 15, 1981. Claimant was found guilty as charged and was dismissed
from service.

The Organization contends that:

1. The investigation was not a fair and impartial hearing as required by
the terms of the controlling agreement because the hearing was not prompt;
2. The Carrier failed to sustain its burden of proof regarding Claimant's
alleged violation of rules concerning "absenting himself without proper authority";
and
3. Carrier's action in dismissing the Claimant from service was an arbitrary,
capricious, and unjust action and an abuse of managerial discretion.

The Carrier's position is that:

1. The evidence within the hearing record is substantial that Claimant
violated Rules 801 and 810 by absenting himself from his post of duty on March 20,
27, 28, 31, 1981, and April 1 and 28, 1981, without authority, and by refusing
to obtain permission to lay off as instructed by his immediate supervisor on
April 28, 1981;
2. That the dismissal of Claimant is justified, as the Claimant had an
attendance problem from the inception of his short-term employment with the Carrier;
and
3. There were no procedural defects in the handling of the hearing.

This Board, after a thorough review of the record, finds that there is
substantial evidence in the record to support the conclusion that Claimant was
guilty of violating Rules 801 and 810. The testimony of Messrs. Degeest and
Altergott, as well as the Claimant's, support the finding that Claimant was
insubordinate in not following the instructions of his immediate supervisor to
obtain permission to be off duty and that he absented himself from his employment
without proper authority and continued in his failure to protect his assignment.

This Board further finds that the Carrier's action in dismissing Claimant
from service is not arbitrary, capricious, unjust, nor an abuse of managerial
discretion. Claimant had been progressively disciplined by the Carrier for his