

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 10177  
Docket No. 9634  
2-SP-FO-'85

The Second Division consisted of the regular members and in addition Referee Ida Klaus when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen & Oilers  
(  
( Southern Pacific Transportation Company  
( (Western Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler Harold Brown was unjustly dismissed from the service of the Carrier following a formal hearing held on the date of March 6, 1981.

2. That accordingly the Carrier be ordered to make the aforementioned Harold Brown 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.

The Claimant, a roundhouse laborer working light duty because of a previous back injury, took off on January 26 and 27 to visit his doctor. He was due back to work on January 28, but did not return or communicate with the Carrier until February 11, at which time he asked about his vocational rehabilitation status. On January 29 his doctor sent a medical report of his condition to the Carrier recommending vocational rehabilitation. On February 24 the Claimant notified the Carrier that he had received a doctor's release stating that he should have medical time loss from January 27 to February 18.

On March 6, 1981, following an investigation, the Claimant was dismissed on charges of unauthorized absence from January 28 to February 9.

The Organization's position is that the Carrier knew at all times where the Claimant was and why he was absent. The Claimant relied on the doctor to notify the Carrier as to the reasons for his absence and the doctor did notify the Carrier by his report of January 29.

The Carrier asserts that the Claimant was unable to show that he was unfit for work during the period of his absence. It disputes the Organization's claim that the doctor's report of January 29, meant that the Claimant was unable to work and argues that the doctor's release permitting the absences was issued at the request of the Claimant, who, at that time, was worried about the upcoming investigation. The Carrier cites the Claimant's three prior instances of discipline for the same offense as justification for the dismissal.

After careful review of the record, the Board concludes that the charge has been sustained. It was the responsibility of the Claimant himself to give prompt, personal notice to the Carrier at the beginning of his medical absence and not rely solely on his doctor.

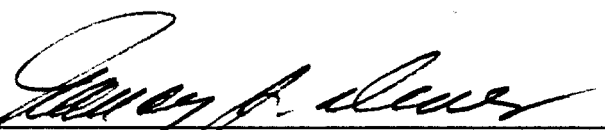
Although he had a poor past record and this was an extended absence, the penalty of discharge was excessive. The Claimant did not unreasonably assume that the Carrier knew of the medical reasons for his absence. Accordingly, the Claimant should be reinstated to his former employment on condition that he pass a medical examination determining his fitness.

A W A R D

Claim is sustained insofar as it requests the Claimant's restoration to service. It is denied in all other respects.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of January 1985.