

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 and Oilers
(System Council No. 19
(The Southern Pacific Transportation Company
((Western Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Fireman and Oiler P.J. Warner was unjustly dismissed from the service of the Carrier following a formal hearing held on date of August 13, 1980.

2. That accordingly the Carrier be ordered to make the aforementioned P.J. Warner whole by restoring her 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 she 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 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.

The Claimant, a laborer, was dismissed on August 21, 1980, following an investigation, on charges of falsification of time card and irregular attendance.

The Claimant was charged with falsifying her time card for the date of July 5, 1980. The Claimant states that she was absent on that day and called in sick at 6:35 a.m. Although her time card was punched in at 6:34 a.m. and entered with eight hours worked on July 5, the Claimant says that she did not make these entries. Furthermore, she states without contradiction, when she noticed the error in the card, she pointed it out to her supervisor; he then scratched out his initial for July 5 on the back of the card.

The Carrier's view is that the Claimant intentionally falsified her time card so that she could be paid for July 5 and for the July 4 holiday. This, it maintains, is evident from the fact that the Claimant's card was punched and filled in for the fifth and signed for the pay period at the bottom by the Claimant. Further, the Carrier challenges the reliability of the Claimant's testimony that she called in sick on July 5, since there was no record of such a call in the log book.

The Carrier supports its charge of irregular attendance by pointing out that the Claimant was absent for five of the seven working days between July 5 and July 15. It notes warnings about her poor attendance on three prior occasions, after one of which her record was assessed 45 demerits.

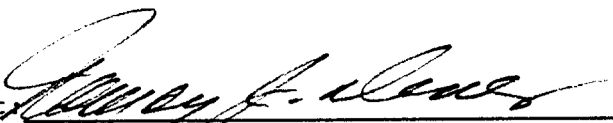
With respect to the charge of falsification of the time card, the Board concludes that the Carrier failed to sustain its burden of proof. In our view, the evidence does not establish an intention on the part of the Claimant to defraud the Carrier as to her attendance on July 5. This is evident from the undisputed fact that the Claimant pointed out the erroneous entry to her supervisor and attempted to have it corrected. It is not for the Claimant to determine who is responsible for the entries on her time card. Accordingly, the claim must be sustained with respect to the charge of falsification of the time card.

With respect to the Claimant's attendance, we find that an absence record of five out of seven assigned days is very poor. That charge has accordingly been sustained. We do not agree, however, that this offense alone warrants dismissal. The Claimant's attendance did improve for a while after three prior warnings. Accordingly, we find that a thirty day suspension is appropriate. The claim for interest has no support in the Agreement or in the policy of the National Railroad Adjustment Board.

A W A R D

The Claimant shall be reinstated and she shall be reimbursed for all wages lost after thirty days.

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.