

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. Under the current agreement, Mechanical Department Electrician L. Yow was unjustly treated when she was dismissed from service on September 12, 1983, following investigation for alleged violation of portions of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on July 20, 1983.

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician L. Yow to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages, including interest at the rate of 10 percent per annum.

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 employe 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, L. Yow, an Electrician with the Carrier and in service since May 1, 1979, was dismissed effective September 12, 1983 as a result of an investigation held on August 29, 1983. The Claimant was charged with violating Rule 801, which states in part that "Employees will not be retained in the service who are . . . dishonest . . ." The Claimant allegedly hurt her back between 12:30 and 1:00 P.M. on July 9, 1983 while in the service of the Carrier. She spent 6 days in the hospital, again allegedly as a result of the injury. The Claimant was dismissed because the Carrier contended the Claimant filled out a CS-2611 accident report form dishonestly, in that she claimed to be injured on the job.

The Organization argued that the Carrier has acted in an arbitrary and capricious manner in this case, and the Carrier did not provide any proof of the dishonesty of this Claimant. The Organization noted the Claimant performed her regular duties from 7:00 A.M. to approximately 1:00 P.M. on the

date in question and that she was hospitalized for 6 days. The Organization argues this shows that the Claimant was in fact hurt. The Carrier witnesses can only state that they did not observe the accident taking place. They did not, however, claim the accident did not happen. The Organization also contended that the Carrier witnesses were not credible, and it is unusual for those who did not observe an accident to complete the 2611 forms. The Organization states the Carrier did not meet its burden in this matter.

The Carrier argued the Claimant was not performing any physical work when the alleged injury occurred. The testimony and the reports of the two other helpers filed on July 11 and July 12, respectively, demonstrate this. The Carrier notes that neither of the co-workers had a reason to lie in this matter and that a careful reading of the Claimant's statement and her testimony at the Investigation would show that she, in fact, was the one perpetrating a lie. The Carrier states the back injury did not occur while on duty and claiming that it did is dishonest. In addition, the Claimant has an extremely poor work record. Finally, the Carrier argued that falsification of an important document such as this is a very serious offense which warrants dismissal.

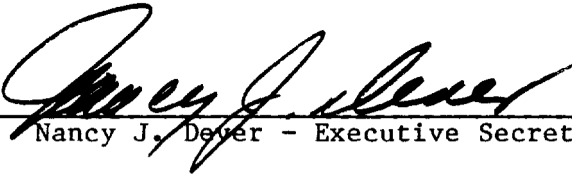
Upon complete review of the record, the Board finds that, if the Carrier is able to prove the charges against this Claimant, dismissal would be the proper penalty, particularly in light of the Claimant's extremely poor work record. The Carrier is in an extremely difficult proof position in that it is trying to prove that something did not happen. It relies on the evidence of two fellow co-workers of the Claimant. One of the co-workers, a Ms. Bradley, was in the employee washroom and away from the work area during at least part of the critical time. The other witness, Mr. Saunders, while testifying that at least part of the Claimant's 2611 form was not true, did not observe the Claimant during all of the critical period, and there seems to be some doubt with respect to how she moved the armature in question. The Board notes the Claimant's 2611 form was completed approximately 11 days after the alleged accident, and the Claimant was on medication during that time. The main question in this case is "Did the Claimant sustain an injury and, if so, did this injury occur while she was working for the Carrier?" The only medical evidence provided to the Board was testimony from the Claimant that she was in the hospital for treatment of this injury for 6 days. This testimony was unrefuted at the Investigation. The Board must conclude that an injury did occur. The second part of the question is "Did it occur while the Claimant was actively working for the Carrier?" By all evidence in the case, the alleged incident occurred between 12:30 P.M. and 1:00 P.M. on July 9, 1983. The Claimant had reported to work at 7:00 A.M. that morning and, from all evidence, had worked with no problems until the incident in question. The Carrier's own witness stated the Claimant did seem to be in pain. It is unlikely the Claimant could have injured herself while off duty and then work approximately 6 hours prior to this incident. The Board can only conclude that the Claimant was injured, and the Carrier has not met its burden of proof that this injury did not occur while the Claimant was on duty. The Claimant did, however, misrepresent some of the circumstances surrounding her injury and, while these circumstances did not affect the essential issue of the case, that being whether or not the Claimant was injured on duty, the Carrier does have the right to expect that its accident report forms be filled out in an appropriate manner. Therefore, while the Claim shall be sustained, the Claimant shall be returned to service with seniority unimpaired but without backpay or other benefits.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1986.