

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10815
SECOND DIVISION Docket No. 10878
2-SP-EW-'86

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, Communications Department District Lineman T. L. Frank was unjustly treated when he was dismissed from service on July 29, 1983, following investigation for alleged violation of portions of Rule M810 of the Rules and Regulations for the Maintenance of Way and Structures, Southern Pacific Transportation Company (Western Lines). Said violation occurring from July 6, July 29, 1983.

2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to restore District Lineman T. L. Frank 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 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 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, T. L. Frank, a Lineman with the Carrier and in service since November 3, 1960, was dismissed on July 29, 1983 as a result of an Investigation held on July 27, 1983. The Claimant was charged with violation of Rule M810, which states "Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves in their employment without proper authority . . . Continued failure by employees to protect their assignment shall be sufficient cause for dismissal. . . ."

The Claimant was transferred from the Carrier's operations in Oregon to El Paso, Texas in 1982. He was on vacation during March of 1983 and was serving a 60-day actual suspension for a prior occurrence from April 6, 1983

to June 6, 1983. The Claimant telephoned the Carrier on June 6 and stated that he would not return on June 6 but would return on June 13 and was given permission to do so. The Claimant did not return on June 13 as promised, and on June 17, 1983 he requested a leave of absence through July 5, 1983. The Claimant acknowledged the approval of the leave of absence and the instructions to report to work on July 6, 1983. The Claimant did not report to work as scheduled, and the Carrier has had no further contact with the Claimant subsequent to June 17.

The Organization argued this Claimant was the victim of overwhelming personal problems. The transfer from Oregon to Texas had aggravated a previous medical condition of his wife, and as a result he could not report to work because he had to care for his spouse. The Organization argued that the Carrier had violated Rule 21, which would require leaves of absence for 90-day periods of time. The Organization further stated the Claimant has a good record in his 23 years of service and, therefore, the penalty was excessive. Finally, the Organization claimed the Investigation that was held was improper under the Rule and that very little evidence was submitted, and there was no effort made to determine the guilt or innocence of the Claimant.

The Carrier argued the Claimant had abandoned his employment. Neither the Organization nor the Claimant appeared at the Investigation, and it is not the Carrier's obligation to develop a full Hearing in the absence of the parties at interest. With respect to the Claimant's wife's medical condition, the Carrier notes the only medical documentation was dated 1980, and this incident occurred in 1983.

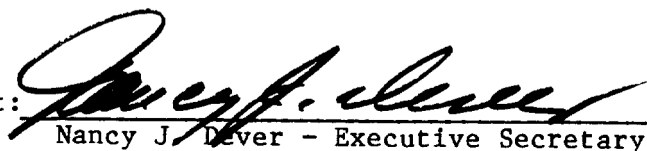
Upon complete review of the evidence presented, the Board finds the Carrier conducted a full and fair Investigation under the circumstances. It is the obligation of the Organization and the Claimant to be present at such Investigations if they wish to present evidence. The Board finds the Claimant did, in fact, abandon his employment on July 6, 1983 and following; there was no request for an additional leave of absence; the Rule states that leaves of absence are to be granted if the requirements of the service will permit. No request was made for any additional time off. There was no evidence presented anywhere in the record that would justify the Claimant's actions. He knew how to request leaves of absence, yet he chose to abandon his employment without any contact with the Carrier after June 17, 1983. The Board finds the Carrier's actions in this case are justified and, therefore, the Claim will be denied.

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 9th day of April 1986.