

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11177
Docket No. 11226
2-SP-EW-'87

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

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

Dispute: Claim of Employees:

1. Under the current Agreement, Mechanical Department Electrician T. M. Ash was unjustly treated when she was suspended from service for a period of thirty (30) days commencing February 1, 1985, through March 2, 1985, following investigation of this alleged violation of portions of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring (sic) between March 1, 1984 and August 31, 1984.

2. Accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to compensate Electrician T. M. Ash for all time lost during the 30-day suspension with interest at 10 per cent per annum. Also, that she be reimbursed for loss of vacation, payment of hospital, medical and group disability insurance, and railroad retirement contributions.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant completed her apprenticeship as an Electrician on September 11, 1984. On September 19, 1984, by letter sent Certified mail to her address of record, by Carrier's Plant Manager of Los Angeles Locomotive Repair Plant, she was advised:

"You are hereby notified to be present at office of Plant Manager, Los Angeles Locomotive Maintenance Plant, 2850 Kerr Street, Los Angeles, California, at 9:00 AM, October 16, 1984, for formal hearing to develop the facts and place responsibility, if any, in connection with your alleged unacceptable attendance during period March 1, 1984 through August 31, 1984, with absenteeism on 22 days and partial absenteeism on 43 days (detailed in attached list) during this period. In connection with this matter you are charged with responsibility which may involve violation of the following quoted portions of Rule 810 of General Rules and Regulations of the Southern Pacific Transportation Company, reading:

'Employees must report for duty at the prescribed time and place...Continued failure by employees to protect their employment shall be sufficient cause for dismissal.'

You are entitled to representation in accordance with Mechanical Department Agreement, and you may bring to the hearing such witnesses as you may desire. Please acknowledge receipt of this letter on copy attached and return it to this office."

On October 1, 1984, another letter was sent Certified mail to Claimant's address of record, advising that at the request of the Local Chairman, the Hearing originally scheduled for October 16, 1984, was being rescheduled to be held at 9:00 A.M., November 8, 1984 "and you are hereby notified to be present at that time."

The record shows that attempts were made by Postal employees to deliver the Certified letters to Claimant on several occasions, but without success. The record also shows that Carrier Officers attempted to hand deliver the notices, but without success.

The Investigation was conducted on November 8, 1984. The Claimant was not present but was represented. We find that Carrier made every reasonable effort to notify Claimant of the Investigation. As stated in Second Division Award No. 8694:

"...The carrier is not the guarantor that the claimant will receive actual notice. Sending a notice by certified mail to claimant's residence is reasonable. Furthermore, if the claimant had been more diligent in retrieving his mail from the post office, he would have known about the investigation. He is estopped from blaming the carrier for his own dilatory conduct."

See also Third Division Awards Nos. 13757, 15007, 15575, 21695.

Claimant's failure to appear at the Investigation rescheduled for November 8, 1984, or to request postponement to such time as she would be able to attend, was at her peril. She chose to submit a letter, dated November 6, 1984, with a notarized signature, reading:

"I have recently been made aware that I am under charge by the Southern Pacific Transportation Co. for alleged violation of Rule 810 of the General Rules and Regulations.

In regard to the late starts that I am being charged with, I did so with the full knowledge and consent of my immediate supervisor, E. Esquivel, my immediate General Foreman, J. Zermeno, and your own assistant, P. A. Seller. The reason for my late starts can be explained to you and verified by any of the three in addition to my Local Chairman R. R. Ramos, and his assistant Mr. R. Ramirez.

I would like to be on record as stating that due to baby-sitting complications for my daughter I am unable to attend this hearing. Further, to protect my employment I requested a leave of absence of you that was denied."

We do not consider the letter of November 6, 1984, submitted by the Claimant as proper substitution for her attendance at the Investigation where she would have been subject to questioning by the Conducting Officer, and possibly by representatives of the Organization.

In the Investigation substantial evidence was adduced that during the six-month period involved in the letter of charge of September 19, 1984, Claimant was absent 22 full days without requesting permission to be absent. She would simply call the office and report that she would not be to work on certain days. An employee does not have an absolute right to be absent by simply reporting to someone that she or he will not be at work, without obtaining permission from supervisory personnel. As stated in Second Division Award No. 6710:

"Every employee has an obligation and a duty to report on time and work his scheduled hours, unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence. No employee may report when he likes or choose when to work. No railroad can be efficiently operated for long if voluntary absences are condoned."

It appears from the record that Claimant's Foreman had approved Claimant coming to work up to fifteen minutes late on occasion if she did have a baby-sitter problem, provided she would punch in on the time clock her actual arrival. The record shows that during the six months involved in the letter of charge, Claimant was tardy within the fifteen-minute agreed-to period 11 times. She was tardy 27 additional times in excess of fifteen minutes, ranging to in excess of one hour. Also, during the same six months she left her assignment early on 7 occasions. As previously stated, she failed to protect her assignment or obtain permission to be absent on 22 days. Following the Investigation, Claimant was notified on February 1, 1985, of discipline assessed of suspension from service for thirty calendar days, February 1, 1985 until March 2, 1985.

Unauthorized absence from work during assigned hours is a serious offense, often resulting in severe discipline. In addition to Second Division Award No. 6710, previously cited, see Second Division Awards Nos. 10038, 8798, and 6855.

We note that in Claimant's letter of November 6, 1984, read into the Investigation, she mentioned only the late starts, as arranged with her Foreman. She said nothing about the days she failed to protect her assignment, the days she was more than 15 minutes late, and the days she left early.

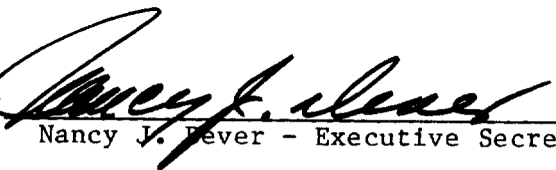
There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.