

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That, the Carrier improperly dismissed Machinist B. Millare (hereinafter referred to as Claimant) from service on May 14, 1986 due to alleged violation of General Rules 604 and 810.

2. That, accordingly, the Carrier be ordered to return Claimant to service with seniority and service rights unimpaired, with compensation for all wage loss.

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.

By letter dated January 17, 1986, Claimant was recalled to work and given thirty days to report. The recall letter stated that "if you do not report within the thirty days from the date of this letter your name will be removed from the Machinist seniority list and will be considered your resignation from the Southern Pacific Transportation Company." Claimant did not report for work within that period. According to the General Foreman, "We have also tried to telephone him and have sent him additional letters" - again, without success.

Claimant was charged with violation of Rules 810 and 604 which state that "Continued failure by employes to protect their employment shall be sufficient cause for dismissal." The charges were sent by certified mail to Claimant at the same address as the recall letter. The return receipt is signed with Claimant's name. When Claimant did not appear at the Hearing, the matter was held in abstenia.

Substantial evidence exists in the record to support the Carrier's conclusion that Claimant violated Rules 810 and 604. The record shows that Claimant was recalled to work, did not appear within the given time and was forewarned of the consequences of failing to report. Hence, Claimant failed to protect his employment as charged.

The fact that the charging officer also served as the Hearing Officer does not require a sustaining Award. As stated in Second Division Award 7119 relied upon by the Organization, such a multiple role in and of itself is not prohibited. The key is whether Claimant was prejudiced by the multiple role played by the same Carrier official. Here, we find no such prejudice. In Award 7119 the Hearing Officer "activated the investigation, preferred the charges, held the Hearing, reviewed the record, assessed the discipline, and denied the appeal." The roles of the Hearing Officer in this case did not reach that level. The evidence in this matter came from another witness and was mostly documentary. The assessment of discipline and appeals therefrom were handled by Carrier officials other than the Hearing Officer. Nor do we find any other basis to conclude that the Hearing was conducted in an unfair fashion.


In light of the above, we cannot say that dismissal was arbitrary or capricious.

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 31st day of August 1988.