

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician R. E. Lewis was unjustly treated when he was suspended from service for a period of twenty (20) days beginning August 1, 1988 through and including August 26, 1988, following investigation for alleged violation of portions of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to compensate Electrician R. E. Lewis for all lost wages due to the twenty (20) day suspension 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 to include interest at the rate of ten percent (10%) 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.

On June 16, 1988, Claimant was notified to attend a formal Hearing on June 23, 1988, to develop facts and place responsibility if any, in regard to his failure to protect his employment on April 5, 6, 7, 8, 14, 25, 29, May 3, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, and on June 6, and June 10, 1988. The notice further stated that for these occurrences the Claimant may be in violation of Carrier Rule 810 which was quoted in the notice of the Hearing.

The transcript of the Investigation reveals that Claimant had fifteen years service with Carrier.

Near the beginning of the Hearing Claimant was presented with a packet of time card copies. Claimant was asked by the Hearing Officer:

"Q. *** Would you briefly explain this packet of time card copies and indicate that these are all copies of your time cards?"

After Claimant examined the cards he replied:

"A. Yes.

Q. Your time card of April 5, 1988 Mr. Lewis indicates you missed four hours sick without pay is that correct?

A. That is correct.

Q. Do you recall what the problem was?

A. Sick.

Q. Something like the flu?"

Claimant admitted he was sick on April 4, 1988, and April 6, 1988, with the flu. He stated further that he applied for sick benefits beginning May 9, 1988 through June 4, 1988. Claimant testified further he was sick on April 14, and he was off April 25 and 29 due to back problems. Claimant also testified he was off a full day on May 10, May 11, May 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, and 26, all due to back problems.

Claimant testified:

"Q. On May 27, Mr. Lewis did you go to the Methodist Hospital for back x-rays?

A. Yes, I did.

Q. And what was the result of these x-rays?

A. I haven't gotten the results back yet.

Q. Is this Dr. Fields, would that be Daniel J.?

A. Yes.

Q. Did he issue you a return to duty slip returning you to duty on June 6, 1988?

A. Yes."

The Carrier's General Foreman testified that he counseled Claimant in March 1988 concerning his absenteeism becoming excessive. He also testified that he sent Claimant to Pacific Health Center where he was diagnosed as having acne; this was on April 5, 1988. After Claimant returned from the Pacific Health Center, he stated he was not feeling well and was allowed to check out. He called in on April 6, 1988, saying he was still sick.

On July 26, 1988, Claimant was notified by letter that he was suspended from service for a period of twenty (20) working days.

A thorough review of the record reveals that Claimant was either sick with the flu or off due to a back injury. Based upon the facts of record and the fact Claimant has 15 years service it is the opinion of the Board the penalty should be reduced to ten (10) working days suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1990.