



Award No. 5486
Docket No. 5396
2-SP(PL)-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician D. E. Davies was unjustly treated when he was dismissed from service on February 10, 1966, for alleged violation of Carrier's Rule 810 of the General Rules and Regulations.

2. Accordingly, (a) Claimant be restored to service with all service and seniority rights unimpaired with pay for time lost; (b) be granted all vacation rights; (c) Carrier pay Southern Pacific Hospital contributions including dependents' hospital, surgical, medical and death benefit premiums under the Travelers Insurance Group Policy for all time Claimant is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Electrician D. E. Davies, hereinafter referred to as the Claimant, was assigned, prior to February 10, 1966, as an electrician under the supervision of Mr. W. T. McPherson, Electrical Supervisor, Tucson-Rio Grande Division, and was headquartered at Tucson, Arizona.

Under date of December 17, 1965, by letter, Claimant requested a thirty day leave of absence from Electrical Supervisor W. T. McPherson. Said Electrical Supervisor agreed to allow Claimant the last two weeks in December, 1965 on leave of absence and was also agreeable to allowing him to take his three weeks vacation commencing January 1, 1966.

On February 9, 1966, formal hearing was conducted by Carrier's representative at Tucson, Arizona and on February 10, 1966, Claimant was dismissed from the service of the Southern Pacific Company (Pacific Lines) for alleged violation of Rule 810 of the Carrier's General Regulations, reading:

his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The Board has previously interpreted this rule providing for compensation for "wage loss, if any" as requiring deduction of outside earnings in computing compensation due. See Second Division Awards 2523 and 2653.

With respect to remainder of claim requesting:

"... (b) be granted all vacation rights; (1) Carrier pay Southern Pacific Hospital contributions including dependents' hospital, surgical, medical and death benefit premiums under the Travelers Insurance Group Policy for all time claimant is held out of service."

Following his dismissal, claimant was allowed all vacation pay to which he was entitled in accordance with the controlling Vacation Agreement. Carrier is not aware of any other vacation rights which would flow to the claimant under the Vacation Agreement and, in fact, asserts there are none. Petitioner's requests that the Company pay premiums for hospital, surgical and medical benefits and pay the premiums for life insurance are not supported by any rule, custom or practice in effect on carrier's property and, carrier asserts, are not properly referable to your Honorable Board.

CONCLUSION

The carrier respectfully submits that having conclusively established that the claim is entirely without merit, it should be denied.

All data herein submitted have been presented to the duly authorized representative of the petitioner and were made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the petitioner in this case, to make such further answers as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this the carrier's initial submission.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

The issue involved herein is whether or not petitioner was advised in writing, as required by Rule 39 of the Agreement, of the charges filed against him in regard to an alleged violation of Rule 810 of the Agreement.

The facts in dispute are that Claimant asked Carrier for a 30 day leave of absence, two weeks of which was granted by Carrier, and Claimant was also permitted to take his three weeks' vacation commencing January 1, 1966. Claimant was required to return to duty on January 24, 1966. Claimant failed to appear for duty on said date, and Carrier set February 9, 1966 as the date of his formal hearing in regard to Claimant's alleged absence from duty since January 24, 1966. Claimant failed to appear at the hearing, and Carrier went ahead without him and conducted the hearing and dismissed Claimant from Carrier's service.

The Claimant's sole contention in regard to this claim is that he did not receive notice in writing of the charge that was placed against him by Carrier and thus he was denied due process as guaranteed by Rule 39 of the Agreement.

Rule 39, the pertinent part thereof, provides as follows:

" . . . At a reasonable time prior to the hearing, such Employee shall be apprized in writing, of the precise charge, against him, . . ."

The Carrier's position is that it complied with said Rule 39 in regard to "notice in writing" when it sent a "notice" letter by Certified Mail to Claimant's last known address, although the letter was returned to Carrier unclaimed by the post office.

The record shows that the "notice" letter was sent by Carrier by "U.S. Certified Mail, Return Receipt Requested", to Claimant, but was returned stamped "Unclaimed" and also a notation on the envelope "NL 2/3/66 903BR". The latter initials, "NL", evidently appear to be "Notice Left", which the post office normally does in cases such as this where the addressee of a Certified Letter is not at home.

We feel that Carrier complied with the "notice" requirements of Rule 39 of the Agreement when it sent the "notice" letter by Certified Mail, Return Receipt Requested" to Claimant's last known address.

Further, the record shows that Claimant did not return to work at any time after January 24, 1966 or apprise Carrier of a reason for not so returning to work. Therefore, if Claimant was without actual written notice of the hearing, he cannot now complain, inasmuch as he was the one solely responsible therefor. See Award 4753. For the aforesaid reasons, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1968.

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