

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Southern Pacific Transportation Company -
 { Texas and Louisiana Lines

Dispute: Claim of Employees:

1. That the Carrier's action of removing Machinist E. Banuelos from service at 9:30 A.M. on December 31, 1970, was not supported by the current Agreement.
2. That in restitution the Carrier be ordered to reimburse Machinist Banuelos the then current pro rata rate of pay for all time lost. The applicable punitive rate of pay for all overtime to which he would have been available, from 9:30 A.M. December 31, 1970, until he was allowed to return to work March 1, 1971, plus six percent (6%) per annum interest until claim is settled. Correspondence has been attached as Exhibits and will be referred to as applicable.

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.

Claimant was withheld from the service of the Carrier on December 31, 1970 because of an alleged violation of an operating rule which prohibited reporting for duty under the influence of any drug or medication. Subsequent to his being withheld from service the claimant visited a doctor who gave him permission to return to work for light duty.

Claimant alleges that he was entitled to a hearing under Rule 34 in that he was being disciplined.

"RULE 34
Discipline-Investigations

(a) An employee covered by this agreement who has been in service more than 60 days, or whose application has been formally approved, shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad. He may, however, in proper cases, be held out of service pending such investigation which shall be promptly held."

The record clearly reflects that the claimant was held out of service ab initio for an alleged violation of company rules. Subsequent justifications for the Carrier's actions cannot alter the claimant's rights under the agreement between the Organization and the Carrier.

The claimant was entitled to an investigation as set out in Rule 34. The failure of Carrier to follow the procedure set out therein violated the agreement.

This opinion has been reached without consideration of the material attached to the Carrier's rebuttal in that same was not presented during the handling on the property.

We will sustain the claim without interest.

A W A R D

Claim sustained in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.