

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That under the current agreement Firemen and Oiler, S. J. Laiacona was unjustly dismissed from the service of the Carrier on January 17, 1975, following an unfair and improper hearing.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
 - (b) Reinstate all vacation rights to the aforesaid employe.
 - (c) Pay employes' group medical insurance contributions, including group medical disability, dependents' hospital, surgical and medical and death benefits premiums for all time that the aforesaid employe is held out of service.

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 employe 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, Mr. S. J. Laiacara entered the service of the Carrier on August 1, 1974, as a Laborer in the Locomotive Department. He was notified by letter dated December 13, 1974, to appear at a formal hearing in connection with his absence from duty on November 25, 28, 29, 30, December 1 and 2, 1974. The hearing was originally set for December 19, 1974. The Organization requested a postponement to December 20, 1974. Thereafter the Carrier postponed the hearing to January 14, 1975 and on the Organization's request,

the hearing was rescheduled for January 8, 1975. On the morning of January 8, 1975, the Organization requested a postponement due to the death of the International President of the Fireman and Oilers and the General Chairman's responsibility to make the necessary connections to attend the funeral. The Carrier denied the request. By letter dated January 17, 1975, the Carrier notified the Claimant that as a result of evidence adduced at the January 8, 1975 hearing, he was found to be in violation of Rule 810 of the General Rules and Regulations; and the Carrier administered the discipline of dismissal from service.

We do not condone the Carrier's action in proceeding with the hearing where the General Chairman was required to be absent due to the death of the International President of the Organization. However, we find no violation of the Agreement that resulted therefrom, nor was there evidence that the Claimant's case was prejudiced by the absence of the General Chairman. The Claimant was ably represented by the Local Chairman. The Claimant was allowed to call any witnesses that he desired. He and his representative were allowed to question all witnesses and to fully present the Claimant's case as they saw fit.

We find from the record of the hearing that substantial evidence existed to support the Carrier's finding that the Claimant was absent without proper authority on the six dates set forth in the charge. The Claimant's work record was extremely poor. In the 86 working days of the Claimant's four months of employment with the Carrier, the Claimant was absent on 43 of those days. In view of the finding of responsibility for the six absences in November and December as set forth in the charge and in view of the Claimant's employment record we cannot find that the discipline of dismissal is in any manner arbitrary, capricious or excessive. Therefore we shall deny this claim.

A W A R D

Claim denied.

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 5th day of July, 1977.