

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.
((Electrical Workers)
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement, Mechanical Department Electrician, J. T. Hunt was unjustly treated when he was removed from service on April 4, 1975 allegedly account being in violation of Rules 801 and 804 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines).
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) Pay employe's group medical insurance contributions, including group medical disability, dependents' hospital, surgical and medical and death benefit premiums for all time that the aforesaid employe is held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employe.

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 J. T. Hunt entered the service of the Carrier on May 11, 1973, as an Electrician at the Locomotive Plant, El Paso, Texas. He was dismissed from the service of the Carrier by letter dated April 4, 1975, reading:

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"Mr. J T. Hunt - Electrician
El Paso, Texas

Evidence adduced in formal hearing conducted in El Paso, Texas, March 11 thru March 19, 1975 established your responsibility for participating in an unauthorized work stoppage of the Company's service at El Paso, Texas, February 10, 1975.

Your actions in this instance were in violation of Rule 801, that part reading:

'Employees will not be retained in the service who are..., indifferent to duty, ... or who conduct themselves in a manner which would subject the railroad to criticism.'

Rule 804, that part reading:

'Any act of hostility, misconduct or wilful disregard or negligence affecting the interests of the Company will not be condoned...'

of the General Rules and Regulations of the Southern Pacific Transportation Company, Form s-2292, as posted.

For reasons stated you are hereby dismissed from the service of the Southern Pacific Transportation Company.

Please acknowledge receipt of this letter by affixing your signature to the attached copy and arrange to turn in any passes or Company owned equipment to the Plant Manager's Office, El Paso.

s/ M. Gogol"

The burden of proof is on the Carrier to demonstrate, with substantial evidence of record, that the Claimant was guilty of the offense upon which the disciplinary penalty of dismissal was based. The Carrier contends that the Claimant's guilt and responsibility for violation of Rule 801 and Rule 804, as a consequence of his participation and leadership in the unauthorized work stoppage, was conclusively established in certain excerpts of testimony from the hearing record. We conclusively disagree. We can find no substantial evidence in the entire transcript or in the Submission and Rebuttal of the Carrier that would show that the Claimant participated in or provided the leadership for the work stoppage at the Locomotive Plant, El Paso, Texas on February 10, 1975. We are compelled to sustain this claim. The Claimant shall be reinstated with his seniority rights unimpaired. He shall be compensated for the wage loss resulting from the wrongful dismissal;

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and we find it appropriate, under Rule 39 for outside earnings to be deducted in computing the compensation due. The Agreement makes no provision for an interest payment and such is not allowed. Claim 2(b) for pay for group medical insurance contributions is disallowed as lacking Agreement support, as per a long line of Awards. Concerning Claim 2(c), vacation rights, the Carrier states that Claimant was allowed all vacation pay to which he was entitled prior to discharge and Carrier asserts that there are no other vacation rights which could flow from the Vacation Agreement. However, vacation rights which accrued as a result of Claimant's reinstatement will be governed by applicable vacation agreement provisions.

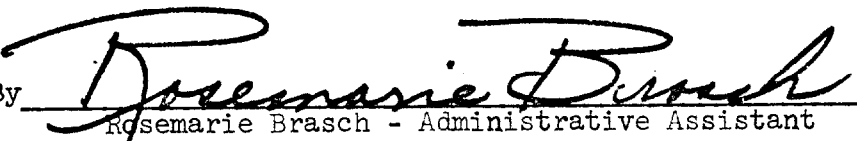
A W A R D

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of February, 1978.

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