

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart 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 Southern Pacific Transportation Company improperly discharged Machinist L. S. Taylor.
2. That Machinist L. S. Taylor's seniority be restored effective May 26, 1976 with all rights unimpaired.

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 employed as a Machinist at Carrier's Running Maintenance Plant in Houston, Texas. As a result of a long period of absence and a physical examination given Claimant he was therefor instructed on April 14, 1976, to report for duty within seven (7) days. Claimant failed to respond thereto.

Claimant was charged with absenting himself from his assignment as a Machinist since April 24, 1976, and given an investigation thereon. He was adjudged guilty as charged and found to have violated Rule 810 of the Rules and Regulations of the Southern Pacific Transportation Company. Said Rule, in pertinent part, provides:

"810. Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority....

"Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

Claimant was accorded due process.

There was substantial evidence adduced at the hearing to support Carrier's conclusion as to Claimant's culpability. Claimant alleged that his physical condition precluded him from returning to work. However, he failed to provide any evidentiary support for such an assertion. The burden for carrying the defense raised by Claimant rested with him. He failed thereof. Carrier, on the other hand, had given Claimant the benefit of extensive physical examinations by reputable physicians. The result of such examinations was that Claimant's physical condition would not preclude him from returning to work. Hence, in such circumstance, Claimant's absence without authority and his failure to protect his employment provided the cause for his dismissal.

Consequently, based on this record and considering the length of Claimant's absence from work, the Board concludes that Carrier's decision to discharge Claimant was not arbitrary or capricious.


Therefore, we will 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 - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1978.