

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { System Federation No. 105, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Electrical Workers)  
                          { Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That at the Portland Communications Shop, Portland, Oregon on April 7, 1978 the Union Pacific Railroad Company unjustly dismissed Equipmentman P. J. Rotherham.
2. That Equipmentman P. J. Rotherham be restored to service with all seniority rights and benefits unimpaired and be compensated for all lost time from date of his dismissal.

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.

The claimant, P. J. Rotherham, is employed as an equipmentman at the Carrier's Portland, Oregon, Communications Shop.

He was notified by letter dated January 17, 1978, to appear on January 31, for an investigation on the following charges:

"That on Friday, January 13, 1978, at 3:30 A.M., you were notified by the Albina Wire Chief to cover television troubles at the Albina Freight House and that you allegedly responded by advising the Wire Chief that you would not cover until morning. This is a violation of Union Pacific Rule 702(b) of the Union Pacific form 7903, Rules governing Duties and Department of Employees, Safety instructions and Use of Radio, effective October 1, 1974; in that you failed to comply with instructions from proper authority."

Rule 702(b) reads:

"Employees must comply with instructions from proper authority."

The investigation was postponed due to the claimant's medical leave of absence and eventually held on April 4, 1978.

Following an appropriate hearing at which all parties were freely allowed to present testimony, witnesses and cross examine the penalty herein complained of was assessed on April 7, 1978.

The gravamen of the Carrier's case is contained in the Wire Chief's log for the day in question. That log in pertinent part reads:

"3:30 A.M., notified PJR (claimant) regarding TV circuits 2 and 3, suspects amplifiers both out but won't cover until A.M. account not that hot. Notified Chief Clerk."

The claimant agrees that the log is essentially correct with the exception that he said he would cover but it would be at 7 A.M.

While the foregoing behavior may not illustrate a complete breach of Rule 702(b) it does constitute performance below that which the carrier is entitled to expect and some form of discipline was appropriate.

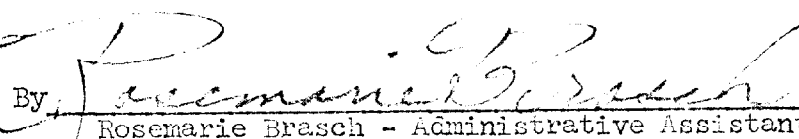
Based upon the entire record, this Board views permanent dismissal as unsuitable. The claimant has suffered financial and emotional loss since his discharge and it is presumed that such an experience will be remedial in nature. He is admonished that he should be motivated more by his responsibility as an employee than personal convenience.

A W A R D

Claimant will be returned to service with the Carrier but without compensation for time lost.

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 5th day of March, 1980.