

The Second Division consisted of the regular members and in addition Referee Kay McMurray 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 Perry L. Johnson was unjustly treated when he was dismissed from service on September 29, 1977, following investigation for alleged violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation occurring on August 31, 1977.
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 percent interest added thereto.
 - (b) Pay employe's group medical insurance contributions, including group medical disability, dental, 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, Mr. Perry L. Johnson, was employed by the Carrier at its Diesel Terminal, Eugene, Oregon.

On September 8, 1977, he was advised by letter of a hearing on September 14, 1977, in connection with an allegation that he did not tell the truth to questions put to him by a company officer at approximately 10:45 P.M. August 31 for which

occurrence he was charged with violation of Rule 801 of the General Rules and Regulations of the Carrier.

Rule 801 reads in pertinent part:

"Employees will not be retained in the service who are ... dishonest..."

"Any act of ... misconduct ... is sufficient cause for dismissal..."

The investigation was postponed at the request of the organization and held on September 27, 1977. Following that hearing the penalty herein complained of was assessed on September 27, 1977.

The organization raises the defense that the record is tainted by the fact that the company hearing official had some knowledge of the incident and was biased. In the present case the transcript reveals that all parties were allowed ample opportunity to present witnesses, cross-examine, make objections and state positions in an equitable manner. This Board concludes that the hearing was fair and appropriate. The record reveals that the Claimant signed off duty at 9:30 P.M. for personal reasons. At the time of the incident, the Carrier was looking for another employee who had been reported missing from his place of duty. The company official testified that he noticed the claimant's van at 10:45 P.M. and stopped it to inquire concerning the claimant's reason for being back on the property. His response indicated that he had made plans to pick up some fellow employees after work. Further testimony in the witness' words was as follows:

"I asked him who was in the van with him and he said no one and I asked him to turn on the dome light. He said it did not work. I asked him to turn on the auxiliary light and he said he couldn't reach it and I told him I would walk around to the passenger side to see if I could see in and when I did so it became obvious that there was another employee in the van."

The employee turned out to be the individual they were searching for. The foregoing testimony was corroborated by another company witness who was present during the discussion.

The claimant testified that his radio was running and the van was noisy so he might not have understood all the questions. In his words:

"He asked me what I was doing and I made the statement that I had to take a couple of guys home after work. Then he asked me did anyone use your van? I said no and he asked me did my interior light work or did my dome light work and I said no. He asked me if I had a flashlight -- I said no. That's about all there was to the conversation."

He further testified that he was not asked whether anyone else was in the van.

The claimant's witness who was sitting on the so-called "funny seat" just a little behind the driver was somewhat evasive in his answers. He testified that he only heard some of the conversation. That he did not recall any question relative to anyone else being in the van.

In view of the foregoing and the entire record this Board must conclude that the weight of credible evidence supports the Carrier's position.

Rule 801 was violated and some form of disciplinary action was appropriate. The record reveals that claimant has now resigned from the service of the carrier. It further contains evidence that claimant was offered return to work on a leniency basis with no monetary remuneration for time lost. This Board concludes that the refusal of payment for time lost does not constitute unjust discipline for a breach of such an important rule. The claimant received all the consideration to which he was entitled. His resignation was his own decision and not within the purview of this Board.

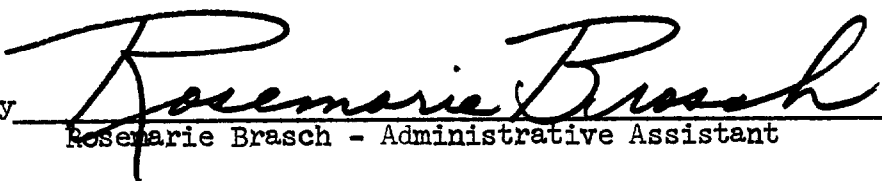
A W A R D

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 March, 1980.