

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman 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 V. M. Godinez was unjustly treated when he was dismissed from service on June 23, 1977, following investigation for alleged violation of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation commencing January 10, 1977.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employee 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 employee'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 employee is held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employee.

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.

Electrician V. M. Godinez, Claimant, asserts that he was unjustly treated when dismissed from service for a lengthy absence, allegedly taken without permission in violation of Rule 810 of the General Rules and Regulations of Carrier.

Rule 810 reads in relevant part as follows:

"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 ..."

Claimant also appeals on the grounds that he was not granted a fair and impartial hearing; the defect was, he claims, that his notice of investigation and hearing specifies the beginning date (January 10, 1977) of the complained-of period of absence, but contains no termination date for said period of absence.

The investigative hearing of April 21, 1977, was held following notice to Claimant and a thirty (30) day postponement at the request of Claimant. Claimant was evidently properly represented at the hearing.

The hearing transcript establishes that Claimant was absent during the period complained of by the Carrier as a result of being detained in federal prison for ninety (90) days following a guilty plea to a charge of attempting to import into the United States a controlled substance.

It is a well established precedent of this Board that incarceration in prison following conviction of a crime does not constitute a justifiable excuse which must be accepted by a Carrier for failure of an employee to report to work and protect his position.

Without reviewing in tedious and possibly embarrassing detail all of the relevant facts on this record, we must state that, in all candor, we can find no extenuating circumstances which would justify a reinstatement order in this case. Claimant's transgression appears to have been both serious and calculated; potential harm to the Carrier's safety and morale interests would be great if someone of Claimant's proclivities were to be returned to work.

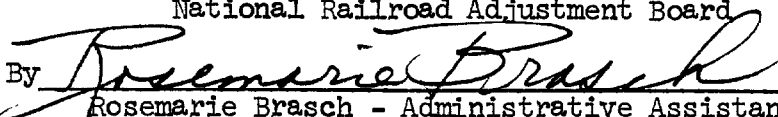
With regard to the alleged procedural defect mentioned above, there is ample evidence on the record to indicate that Claimant's ability to defend himself in this hearing was in no way prejudiced by lack of specificity in the initial charges; neither during the hearing itself or before did Claimant or Claimant's representative complain that lack of knowledge of specific charges was hampering the preparation of their defense.

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 11th day of June, 1980.