

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That under the current Agreement, former Mechanical Department Electrician Apprentice C. V. Restivo was unjustly treated when he was dismissed from service on September 7, 1977, following investigation for alleged violation of portions of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation commencing September 15, 1976.
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, dependent's hospital, surgical and medical, and death benefit premiums, and railroad retirement contributions for all time that the aforesaid employee was 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.

The situation giving rise to this dispute is as follows:

Claimant had been placed on an indefinite sick leave since September 15, 1976. He attempted to return to work on April 21, 1977, at which time Carrier requested that he make his medical records available to Carrier's Chief Medical Officer for review before he could be returned to duty. Claimant, for reasons unknown to this Board, did not make the requested records available to the Carrier.

The Carrier held a hearing and as a result of that hearing, dismissed the Claimant for violation of Rule 810 of the General Rules.

The Board is of the opinion that Claimant's action does not warrant the penalty imposed. The record reveals that Claimant requested and was granted a sick leave on September 15, 1976, therefore, he was absent with proper authority. The record further reveals that the Claimant presented himself for duty on April 21, 1977, at which time the Carrier requested he submit medical records to the Carrier's Chief Medical Officer, this the Claimant did not do. There is no question that the Carrier has the inherent right to require its employees to submit themselves for physical examination before returning them to duty.

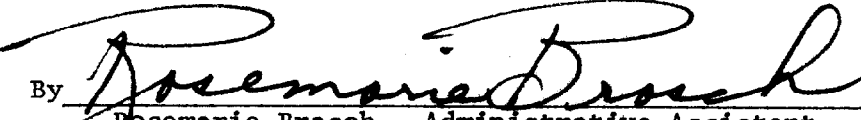
Based on the particular facts of this case, the Claimant should be reinstated to service without back pay, subject however to the condition that Claimant will be required to submit to a physical examination by Carrier's Medical Officer within 30 days of notification by Carrier, to determine whether Claimant should remain on medical leave of absence or return to active service.

A W A R D

Claim sustained in accordance with the 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 25th day of February, 1981.