

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician Ray Robles was unjustly treated when he was dismissed from service on October 24, 1978, following investigation for alleged violation of portions of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation occurring on September 27, 1978.
2. That accordingly, the Carrier be ordered to:
  - (a) Restore Claimant Mr. Ray Robles to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital, medical insurance, group disability insurance, railroad retirement contributions and loss of wages including interest at the rate of 6 percent per annum.

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.

After an investigation held on October 17, 1978, claimant, an electrician in the Mechanical Department of the Carrier's Heavy Locomotive Maintenance Plant in Sacramento, California, was dismissed from service for allegedly violating Carrier Rule 801. The notice of charges sent to claimant at an address on file at the plant emphasized that claimant had engaged in dishonest conduct on September 27, 1978 while the discharge letter dated October 24, 1978 stated claimant had been careless, quarrelsome and vicious on September 27, 1978. Claimant failed to appear at the hearing. At the commencement of the October 17, 1978 hearing, the organization offered evidence that the notice of charges had ostensibly been sent to an incorrect address. When the organization's objection to the notice was overruled, the committee walked out of the hearing and did not participate further. The hearing officer conducted the hearing in the absence of the organization. Even though the claimant was charged with committing misconduct on September 27, 1978, the hearing concerned events which occurred on September 26, 1978.

The organization points to three purported defects in the hearing process which, according to the organization, undermined the integrity of the hearing and deprived the claimant of a fair and impartial Rule 39 hearing. First, the organization contends claimant was not given proper notice of the alleged offense because, on the day of the hearing, the carrier personnel records showed claimant living on Freeport Blvd. while the notice of charge was sent to a 49th St. address and returned, by the post office, to the carrier. We see little merit in this objection. The notice was sent to the claimant's address on file with the plant. The carrier need not guarantee that claimant receive actual notice. Sending a certified letter to the address on file at the plant satisfied the Rule 39 notice requirements. Second Division Award No. 5486 (Dugan).

The organization's second objection is that the claimant was charged with one offense and dismissed for another. Both the notice of investigation and the dismissal letter expressly refer to carrier Rule 801 but the notice alleges dishonesty and the dismissal letter states claimant engaged in other types of misconduct. In evaluating this objection, we are concerned more with the substance of the alleged offense rather than the label placed on the offense. After reviewing the record, we are convinced that the notice of charge and the discipline letter substantially referred to the same underlying offense. Both the original charge and the dismissal letter concerned Rule 801 violations. At the hearing the carrier presented evidence showing the claimant was dishonest and engaged in other misconduct. There was no prejudice to the claimant since the investigation covered only the events surrounding the alleged theft of electrical contactors. Thus, the record shows that the claimant was charged with and disciplined for misconduct in violation of Rule 801 which arose out of a single course of events.

Lastly, the employees object to the specificity of the notice of charges contending the claimant was charged with an offense on September 27, 1978, while the investigation addressed alleged misconduct committed by the claimant on September 26, 1978. This objection was raised, for the first time, before this Board. We are precluded from ruling on objections which were not timely raised during the handling of the dispute on the property. Third Division Award No. 9578 (Johnson). Thus, we cannot consider the Organization's third objection.

The facts in this case are basically uncontested since the claimant did not appear at the investigation and the organization was not present to conduct a defense on the merits. On the evening of September 26, 1978, a carrier Special Agent discovered an automobile belonging to claimant's friend illegally parked on carrier property. Inside the car, in plain view, the Special Agent observed a cardboard carton marked "SP" and "ELECTROMOTIVE/8284664". The carton contained electrical contactors. Later, when claimant arrived at the scene, he used abusive language when communicating with the Special Agent. The Special Agent's rendition of events was corroborated by the General Foreman and a Carrier Patrolman. Electrical contactors, like those found in the automobile, had been missing from the carrier's electrical shop. The silver tips on many of the contactors found in the car had been removed. The silver is the most valuable part of the contactors.

From the above facts, it is clear that claimant converted carrier property to his own use. In addition, during the time the Special Agent was investigating the carton in the car, the claimant became unnecessarily abusive toward the special agent. Thus, the claimant was dishonest and engaged in other types of misconduct in violation of carrier Rule 801.

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 6th day of May, 1981.