

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8838
Docket No. 8767
2-SPT-FO-'81

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler N. Miller, was unjustly dismissed from the service of the Carrier on June 26, 1979, following a hearing held on June 26, 1979, following a hearing held on June 20, 1979.
2. That accordingly, the Carrier be ordered to make the aforementioned N. Miller, whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law and compensated for all lost wages. In addition to money claimed herein, the Carrier shall pay the claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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 essential facts in this case are undisputed. Claimant entered the service of Carrier on January 19, 1979 as a Laborer and continued in that capacity until he sustained a minor injury on April 20, 1979. It was understood that he would take off for a few days to tend his problem and then return to work. On April 25, 1979, he picked up his pay check and explicitly told Carrier ~~that~~ he would resume his duties on April 30, 1979, but he never returned to his position or notified Carrier that he would be absent beyond the April 30 date. A letter was sent to his residence on May 24, 1979 directing him to report to the Office of the Administrative Manager on June 4, 1979, but he never complied with this request or informed Carrier that he could not appear. Since April 25, 1979, he was not seen nor heard from again.

On June 5, 1979, Carrier informed him by registered letter that he was being cited for allegedly violating Rule 810 of the General Rules and Regulations

and scheduled for an investigative hearing for June 20, 1979. The letter was later returned by the U.S. Postal Service marked, "Unknown at Address" and Carrier conducted the investigation as scheduled. Rule 810 provides in pertinent part that:

"Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

Based on the investigative record, Carrier determined that he violated Rule 810 and dismissed him from service, effective June 24, 1979. This disposition was appealed by the Organization.

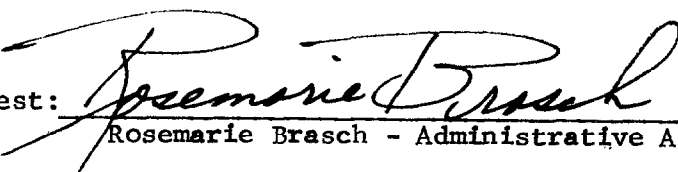
In our review of this dispute, we concur with Carrier's decision. Claimant was obligated, consistent with the requirements of Rule 810 and particularly, since May 24 to inform Carrier of his whereabouts and employment intentions. Outside of his statement on April 25 that he would return to work on April 30, he completely and literally abandoned his job. There is no question that he was aware of the Carrier's May 24, 1979 communication. Since it was not returned by the Postal Service, effective delivery must be presumed. By not responding to this directive or informing Carrier that he could not return for justifiable reasons, he violated Rule 810. Moreover, when we consider that the Sheriff's Department was also looking for him to serve him with an arrest warrant, we must conclude that he abandoned his position. Carrier made every reasonable effort to protect his position, but he was unresponsive to these efforts. Under these circumstances, Carrier was well within its right to terminate his employment. We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of December, 1981.