

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 Ronnie R. Smith, was unjustly dismissed from the service of the Carrier on June 15, 1979, following a hearing held on June 8, 1979.
2. That accordingly, the Carrier be ordered to make the aforementioned R. R. Smith, 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 facts in this case are undisputed. Claimant was dismissed from service on June 15, 1979 following an investigation that was held on June 8, 1979. He was charged with violating Rule 810 of the Rules and Regulations of the Southern Pacific Transportation Company when he was convicted in the San Bernardino Municipal Court on January 26, 1979 for maintaining a place for the use of the sale of narcotics and placed on two years probation.

The Organization has appealed this decision on the grounds that the penalty reflected an abuse of managerial discretion, since Carrier waited until June 8, 1979 to convene an investigative trial. It asserted that Rule 33 of the controlling agreement entitled him to a prompt hearing.

Carrier contends that he was properly charged in accordance with the Agreement and asserts that the record and the circumstances of the court's disposition including his own admissions, support its penalty determination.

In our review of this case, we concur with Carrier's position. The record clearly shows that Claimant violated Rule 810 when the Court found him guilty of the cited criminal charges and such off-duty conduct affected Carrier's interest. It is a dismissable offense. While we are reluctant to modify Carrier's penalty determination because of the serious nature of his infraction, we believe that he should be reinstated on a leniency basis. He was candid and cooperative with Carrier officials at the administrative hearing and forthrightly admitted his misconduct. Moreover, he was never disciplined before on the property for any rule violation and the court ordered terms of his probation provide an encouraging basis for reasonably assuming that he will become a satisfactory employee. We will return him to work for these reasons without back pay with the explicit understanding that we expect him to comply fully with Carrier's rules and regulations in the future. This is his absolute last chance.

A W A R D

Claim sustained to the extent expressed herein.

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 9th day of December, 1981.