Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9433
SECOND DIVISION Docket No. 9089
2-SPT-EW-'83

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 (Pacific Lines)

Dispute: Claim of Employes:

1. That under the current Agreement, Mechanical Department Electrician M. D. Godwin was unjustly treated when he was dismissed from service on July 30, 1979, following investigation for alleged violation of portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said violation occurring from June 19, through July 10, 1979.

2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:

   (a) Restore Electrician M. D. Godwin to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages including interest at the rate of six percent (6%) 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.

Claimant, an electrician at the Sacramento Heavy Locomotive Maintenance Plant, was absent from his regular assignment from May 11, 1979 to June 15, 1979. During that period, Claimant or his wife regularly notified the Carrier that Claimant was ill. On June 15, 1979, Claimant called the Electrician Supervisor and stated that he would report to work on June 18, 1979.

When Claimant failed to protect his assignment and to properly mark off on June 18, 1979, the Carrier sent Claimant a certified letter directing him to report to the Administrative Manager on June 29, 1979 to explain his long absence. The certified letter (dated June 19, 1979) went unclaimed. Claimant continued to be absent from June 18, 1979 to July 10, 1979 without contacting the Carrier. On

the latter date, the Carrier notified Claimant to attend an investigation on July 26, 1979 to determine if Claimant had failed to protect his assignment during the period from June 19, 1979 to July 10, 1979. The notice was sent by certified mail.

Claimant did not attend the investigation. After the investigation commenced, the Organization requested a postponement of the investigation asserting "unforeseen circumstances" as the reason underlying the request. The Organization's request was denied. The investigation continued and the Carrier presented documentary evidence that Claimant was absent during the period in dispute and that he failed to contact his supervisor. As a result of the investigation, the Carrier dismissed Claimant from service on July 30, 1979.

The record contains conclusive evidence that Claimant was absent from his regular position, without authority, during the period in question. The Organization's primary contention is that Claimant was deprived of a fair and impartial hearing because the Carrier arbitrarily refused the Organization's request for a postponement. According to the Organization, Claimant's guilt cannot be established unless he is present to confront and cross-examine the Carrier's witnesses.

This Board must consider the entire record, on a case by case basis, to determine if the Carrier's denial of an investigation postponement request undermines Claimant's due process rights under Rule 39 of the applicable Agreement. In this particular case, there are several factors which justify the Carrier's denial of the postponement. First, when the request was made, Claimant's representative merely said the request was necessary because of "unforeseen circumstances" but did not specify or describe the nature of these circumstances. Second, prior to the notice of charges, the Carrier exercised reasonable diligence in attempting to contact Claimant and gave him an opportunity to explain his extended absence. Claimant did not avail himself of this opportunity. Third, Claimant had been regularly calling the Carrier prior to June 18, 1979. There is no evidence in the record to show that Claimant was unable to properly report off duty during the period subsequent to June 18, 1979. Fourth, though Claimant voluntarily chose not to appear at the investigation, his representative had a chance to cross-examine all Carrier witnesses. Finally, neither Claimant nor the Organization asked for a postponement prior to the investigation. The cumulative effect of the above cited factors leads us to conclude that Claimant, in this particular case, was not prejudiced by the Carrier's decision to deny the Organization's postponement request.

Due to his prolonged and unauthorized absence, Claimant has manifested an apathetic attitude toward his job. Therefore, this Board must uphold the assessed discipline.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of March, 1983.