

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

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

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler C. L. Simms was unjustly dismissed from the service of the Carrier without a fair and proper formal hearing.
2. That accordingly the Carrier be ordered to make the aforementioned C. L. Simms whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, customs or law, and compensated for all lost wages plus 6% annual interest on all such lost wages.

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.

Claimant, C. L. Simms, entered Carrier's service on June 25, 1973 as a waiter in Carrier's Commissary Department. He relinquished his position and was employed on September 5, 1978 as a laborer in Carrier's Mechanical Department. He was employed as a laborer at Carrier's Los Angeles, California locomotive maintenance plant.

On June 23, 1980, Claimant requested a leave of absence from his employment because of the illness of his mother in Portland, Oregon. The leave was granted. Subsequently, Claimant requested and was granted extensions of his leave of absence through September 29, 1980. Claimant did not report for duty on September 30, 1980. Carrier, on January 9, 1981 terminated Claimant's service for absenting himself from his employment without authority in violation of Carrier's Rule 810 in accordance with Rule 33(b) of the Collective Bargaining Agreement governing firemen and oilers (laborers).

Claimant received a termination letter on January 13, 1981. The Claimant's position is that the Claimant was unjustly dismissed from the service of the

Carrier without a fair and proper formal hearing and that he be reinstated with all wages, benefits, etc. to his former position.

Rule 810 of the general rules and regulations of the Southern Pacific Transportation Company reads in part, as follows:

"Employees must ... not absent themselves from their employment without proper authority...."

Carrier also relies upon Rule 33(b) of the Firemen and Oilers Agreement which reads in part, as follows:

"... Employees who are absent from duty without authority in excess of ten (10) days, without good and sufficient reason which must be furnished within fifteen (15) days of the date such absence begins in which event their employe relationship may be terminated without a hearing."

This is a situation in which a multiple of ten (10) days has occurred from the time that Claimant was due to report back to work and the time Claimant was discharged. The Collective Bargaining Agreement is quite clear that a hearing need not be held under these circumstances. There is no justification in defense for Claimant's actions, and accordingly, the actions of the Carrier are justified.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of May, 1983.