

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 D. H. Richardson 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 D. H. Richardson 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 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.

D. H. Richardson, the Claimant, entered Carrier's service on May 3, 1977 as a laborer at Carrier's Los Angeles Locomotive Maintenance Plant. He continued employment until April 15, 1978. On April 15, 1978, Claimant claims that he sustained an injury while on duty. Subsequent thereto, he was released by his treating physician to return to duty on February 7, 1979 with minor restrictions on his activities. Claimant was sent notice on September 10, 1980 terminating his service for absenting himself from his employment without authority in violation of Carrier Rule 810 and in accordance with Rule 33(b) of the Collective Bargaining Agreement. There is no evidence in the record that Claimant attempted to contact the Carrier at anytime after February 7, 1979 up to and through the time he was discharged on September 10, 1980. Claimant appeals on the ground that he was not afforded a just and impartial hearing. Carrier's position is based on Rule 810 of the General Rules and Regulations which reads in pertinent parts, as follows:

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

Carrier also bases its decision on Rule 33(b) of the Collective Bargaining Agreement which reads in pertinent parts, 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 employee relationship may be terminated without a hearing."

In this instance, the Collective Bargaining Agreement does not require a hearing. Claimant never contacted the Carrier from the date he was discharged from his treating physician until the date he received the notice of termination. Many multiples of ten (10) days occurred within that time frame. Carrier claims that it attempted to contact Claimant, but these efforts were to no avail. The letter of termination was actually unclaimed by the Claimant. It was finally returned to the Carrier on October 29, 1980.

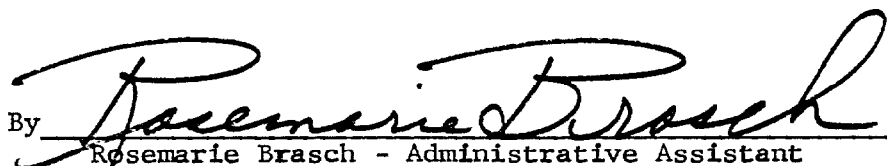
Even if Mr. Richardson was still suffering effects of his injury, he should have protected himself by extending his medical leave by revisiting his physician and having his physician communicate with the company physician or at least do something to show that he was still medically distressed. Nothing in the record indicates that this was the case.

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.