

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement Fireman and Oiler Paul Gonzales, was unjustly dismissed from the service of the Carrier on March 5, 1980, following a hearing held on February 22, 1980.
2. That accordingly, the Carrier be ordered to make the aforementioned Paul Gonzales, whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of 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 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.

Fireman-Oiler Paul Gonzales was hired on September 14, 1977. He was served with a notice of investigation on January 17, 1980 charging him with irregular attendance during the period October 1, 1979 to January 15, 1980. A hearing was held on February 22, 1980 but Claimant did not appear nor was any explanation for his absence forthcoming. The investigation proceeded without him. Claimant was found guilty of the charges and on March 5, 1980 was dismissed from service.

A review of the record before this Board establishes that Claimant was duly notified of the hearing, gained a postponement at his own request, and still failed to appear on the new date. Thus it was wholly appropriate for the hearing to proceed in his absence. As Referee J. McGovern observed under similar facts, "The investigation was originally postponed at claimant's request and rescheduled for a date certain. Claimant failed to appear for the second time after proper notice, etc. His failure to appear under these circumstances was at his own peril. (Award No. 6499, Second Div.)". Also Second Division Award No. 8439

citing with approval the following language from Second Division Award 5987: "When Claimant failed to appear at the hearing..., after having been properly served with notice, he acted at his peril; and Carrier's proceeding with the hearing in his absence was not a denial of due **process.**"

There was substantial evidence to sustain the Carrier's decision to discipline Claimant for his irregular attendance. As the Claimant's prior record is poor, including a past dismissal with reinstatement on a leniency basis without any demonstrable improvement, the Carrier's decision to dismiss him was reasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June, 1983.