

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician Helper M. A. Davis was unjustly treated when he was furloughed from the service of the Southern Pacific Transportation Company (Pacific Lines) on March 14, 1980, due to alleged excessive absenteeism and alleged poor work performance and attitude.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Compensate Electrician Helper M. A. Davis for all time lost during his furlough with the loss of wages to include interest at the rate of six percent (6%) per annum and restore all rights unimpaired including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, and railroad retirement contributions for all time that the aforesaid employe was held out of service.

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 was classified as an Electrician Helper in the Mechanical Department at the Carrier's Eugene, Oregon Locomotive Maintenance Plant at the time of events germane to this dispute. Claimant was furloughed on March 14, 1980, per the Company because of a decrease in need for the classification he held. The record shows that the Claimant previously had been a journeyman electrician with the Carrier before returning in the helper classification; thus, when an opening occurred for a journeyman electrician at the facility, the Claimant sought, and was denied, such opportunity on the basis of his attitude and work production in the helper classification. A grievance was filed on May 19, 1980 contending that

the Claimant's furlough as a helper was inappropriate, an attempt by the Carrier to rid itself of an employe without disciplining him and, thus, denied the Claimant access to the hearing/grievance procedure under the Agreement. Part of the basis for such conclusion by the Organization was a memorandum from the General Foreman to the Plant Manager -- an internal Carrier document -- complaining of the Claimant's absenteeism and safety; it was dated March 7, 1980 -- a week before his furlough. A statement in such memorandum is relied upon by the Organization:

"I feel rather than taking this man to a formal hearing that we should force reduce him and thereby eliminate the expense and time consuming process of holding a formal hearing."

The record shows that the Claimant was recalled to the helper position on August 27, 1980 and that on October 22, 1980 he resigned from the Carrier on his own volition. The Carrier contends the matter is moot because of the aforementioned resignation. We think not, since the Claimant remained an employe while in his furlough status during the March-August, 1980 period and it was during such period a grievance was filed. (The record does not indicate citations of time limits by the Carrier to the filing of the grievance.) It follows that any relief sought would have to be limited to such March-August, 1980 time period. We find that, by virtue of the Claimant's recall to the helper position in August, the Organization's contention is rendered without substance. The Claimant's rights, if any, were limited to the helper classification. The Carrier has the unilateral right to determine how many and which classifications it needs to perform work assignments at any given time. The Agreement provides guidance as to who is to be retained. Without addressing the question as to how the General Foreman-Plant Manager memorandum came to light, it is obvious that his proposed action as he stated was in error as complained by the Organization. Such conclusion does not ascribe rights to the Claimant in the journeyman classification however -- only the helper one. The fact that the Claimant was recalled from furlough in August indicates that the General Foreman's ill-advised statement was not heeded. The Organization must demonstrate that the Carrier furloughed the Claimant for other than sound economic reasons. While the timing of the General Foreman's memorandum is suspect, it is insufficient to conclude it formed the basis for the Carrier's decision to excess a helper position. The Claimant's recall in August of 1980 gave credence to such action.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983.