

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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 C. W. Beard was unjustly treated when he was suspended from service for a period of ten (10) days on September 22, 1979, following investigation for alleged violation of portions of Rules 802 and 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring on September 8, 9, and 10, 1979.

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

(a) Compensate Electrician C. W. Beard for all time lost during the ten day suspension; and the loss of wages to include interest at the rate of six percent (6%) per annum.

(b) Pay employe's group medical insurance contributions, including group medical disability, dental, dependent's hospital, surgical and medical, and death benefit premiums, and railroad retirement contributions for all time that the aforesaid employe was held out of service.

(c) Reinstate all vacation rights to the aforesaid employe.

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 employes 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.

This is a claim for time lost by the Claimant Electrician for a ten-day suspension from service following a formal investigation on the charges that Claimant was in violation of Rule 802 and Rule 810. Rules 802 and 810 state the following:

Rule 802:

"Indifference to duty, or to the performance of duty will not be condoned ..."

Rule 810:

"Employes ... must not absent themselves from their employment without proper authority ... Continued failure by employes to protect their employment shall be sufficient cause for dismissal ..."

The Organization argues that Claimant was unjustly dealt with when he was assessed a ten-day suspension for being absent three days and that such action on the part of the Carrier violated Rules 25, 36 and 37 of the controlling Agreement, which read as follows:

Rule 25

"(a) An employe detained from work account sickness or for other cause, shall notify his foreman as early as possible. When returning to work he shall give the foreman in charge sufficient notice (at least 8 hours) so that proper arrangements may be made.

"(b) If an employe is unavoidably kept from work, he will not be unjustly discriminated against."

Rule 38

"An employe who considers himself unjustly treated, or that this agreement as applicable to his craft is not being properly applied, shall have the right to submit the facts informally to his foreman for adjustment and/or to the nearest duly authorized local committee of his craft. The duly authorized local committee (of not to exceed [3] members of the craft), if they consider it justified, may submit the case informally to the foreman, general foreman and/or the master mechanic (or from foreman to general foreman and/or to shop superintendent in General Shops)."

Rule 39

"No employe shall be disciplined or dismissed without a fair hearing by the proper officer of the Company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe shall in writing, be apprised of the precise charge against him, be given reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be represented as provided for in Rule 38. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal. Stenographic report of hearing will be taken if requested and employe's representative will be furnished with a copy."

Claimant alleges that he had intestinal influenza and was unable to come to work on September 8, 9 and 10, 1979. Claimant further alleges that on September 6, 1979, he notified a Trainmaster that he was sick and would not be coming to work on September 7th. The Organization contends that in accordance with past practice procedure applied at the Tucson Roundhouse when an employe notifies the foreman he will be absent from work because of illness, the employe is considered off work until he notifies the Roundhouse foreman or his representative to mark him back in the turnover book. Furthermore, Claimant contends that on September 7th his son called the Carrier's tower to notify the Carrier that he was still too ill to return to work on September 8th but his son could not get through to the Roundhouse foreman. The record shows no contention by the Claimant or the Organization that Claimant personally contacted or made an effort to advise the Carrier of his absence from work other than on September 6th, nor was there any communicated permission to be off on September 8, 9, or 10, 1979.

With this as factual background for the events in question, the Board finds, as in previous awards, that there is an obligation on the employe to protect the Carrier's service on the days he is assigned to work. (See this Division's Awards in Nos. 6710 and 8216.) The issue here is not whether Claimant's excuse was good cause for being absent from work, but whether Claimant fulfilled his obligation to inform the Carrier and receive permission to lay off. Any past practice concerning reporting in or notification to a foreman or his representative relied on by the Organization as controlling cannot apply when the record indicates Claimant specifically informed the Trainmaster on September 6th that he would be returning to work on September 8th. The excuse of an unverifiable attempt to contact the Carrier by someone other than Claimant is not sufficient to justify Claimant's failure to show up for work on the disputed days. Second Division Award 9327 (Goldstein).

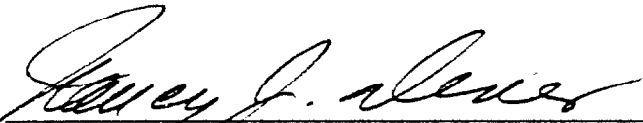
The Board finds the summarized evidence overwhelmingly substantial with regard to Claimant's non-compliance with Rules 802 and 810 of the controlling Agreement. Numerous prior awards of this Board have set forth the principle that absenteeism is serious and that excessive and habitual failure to report to an assignment is sufficient grounds for discipline. (For example see Second Division Awards 7348, 8216, 8523, 8238 and 8546.) The Carrier could hardly maintain normal operations unless its employes regularly report to work. Second Division Award 7870 (Roukis). The discipline imposed here is not harsh, and there is no basis on which the Board should interfere with the Carrier's action. The record is adequate to support the penalty assessed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 18th day of January 1984.