

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 9777  
Docket No. 9529  
2-SP-MA-'84

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

Parties to Dispute: ( International Association of Machinists and Aerospace Workers  
(  
( Southern Pacific Transportation Company  
(Western Lines)

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist J. W. Telphy (hereinafter referred to as Claimant) from service on September 26, 1980.

2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, with compensation for all wage loss.

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.

The Claimant, Mr. J. W. Telphy, entered the service of the Carrier on February 1, 1972. Mr. Telphy was employed as a machinist at the Carrier's West Colton, California Locomotive Maintenance Plant.

By letter dated September 8, 1980, Mr. Telphy was notified to report to a formal hearing to be held on September 23, 1980, concerning:

"... your alleged erratic attendance during the period of August 1, 1980 through September 7, 1980, when you allegedly absented yourself without authority six (6) times, absented yourself for personal business five (5) times, absented yourself account sickness three (3) times, and were tardy three (3) times. In connection with these absences you are charged with responsibility which may involve violation of the following quoted portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company:

'Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority ... Continued failure by employees to protect their employment shall be sufficient cause of dismissal.'"

The formal hearing was conducted as scheduled on September 23, 1980; and Mr. Telphy was subsequently notified by letter dated September 26, 1980, that he was dismissed from the Carrier's service for violation of Rule 810 of the Carrier's General Rules and Regulations.

The record shows that on July 31, 1980 Mr. Telphy contacted Assistant Plant Manager W. S. Evert to inform him that he had returned from his leave of absence which had been granted after a bereavement leave from May 27 through May 29, 1980; and that Mr. Evert told Mr. Telphy that West Colton was short of forces, that his job no longer existed and that he should come to work on August 1st and place himself where his seniority would allow. However Mr. Telphy did not report for work until August 3, 1980. Mr. Telphy did not report to work on August 6, 1980. Thereafter according to Mr. Evert's testimony and the exhibits of record Mr. Telphy was:

sick on the 7th; personal business 8th and 9th;  
personal business 10th; absent 15th, absent 16th;  
personal business on the 17th; personal business  
23rd and 24th; sick 30th and 31st; absent on  
September 6th, which totaled 15 days that Mr. Telphy  
did not work on his regular assignment .... (Tr-10)

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The record also indicated that during the priod of time from August 1 through September 7, 1980 Mr. Telphy was late for duty on August 13 and 28, and that he left work early on August 29, 1980.

While the Organization contends that Mr. Telphy could not be considered absent from duty for August 1 and August 2, because he had not obtained a position through the exercise of his seniority, and while the record is clear that Mr. Evert personally instructed Mr. Telphy to report on the first of August, even if the August 1 and 2 dates were not considered, the evidence before this Board for the period between August 3 and September 7, 1980 makes clear beyond question that Mr. Telphy was in violation of Rule 810.

Once it is established that an employe is responsible for a violation of the Carrier's Rules, it is proper for the Carrier to review an individual's personal record in reaching a determination on appropriate discipline. In the instant case Mr. Telphy's personal record of past discipline was not exemplary.

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 1st day of February, 1984