

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
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(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That claimant W. J. Horn was unjustly dismissed from service by the Carrier.
- (2) That claimant be restored to service with seniority rights unimpaired.
- (3) Compensate claimant for all time lost in addition to an amount of 12% per annum compounded annually on anniversary date of claim.
- (4) Make claimant whole for all vacation rights.
- (5) Reimburse claimant and/or his dependants for all medical and dental expenses incurred while claimant improperly held out of service.
- (6) Pay to claimants estate whatever benefits claimant has accrued with regards to life insurance for all time claimant improperly held out of service.
- (7) Pay claimant for all contractual holidays.
- (8) Pay claimant for all contractual sick leave.
- (9) Pay claimant for all jury duty and for all other contractual benefits.

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.

Claimant was dismissed from the Carrier's service on December 2, 1981 following formal hearing convened on November 12, 1981, recessed until November 16, 1981 at Claimant's request and completed on November 17, 1981. The Carrier charged that the Claimant violated the following rules:

"Rule 801: Employees will not be retained in the service who are...quarrelsome, or otherwise vicious;"

"Rule 802: Employees must not enter into altercations while on duty;"

"Rule 810: Employees must...devote themselves exclusively to their duties during their tour of duty."

The record in the instant case discloses that on October 19, 1981 Claimant reported to work on his assignment as Sheet Metal Worker, Locomotive Maintenance Plant, Los Angeles, California. At approximately 10:30 a.m. Claimant left his assignment on personal business and was to return to work later. At approximately 2:00 p.m., he informed his supervisor that he would not return to work that day. However, Supervisor L. L. Oyler requested that Claimant return to work to discuss Claimant's failure to perform duties assigned to him earlier that day.

At approximately 2:30 p.m. Claimant returned to the Carrier's property, and shortly thereafter was involved in an altercation with Laborer A. Sepulveda on Company premises concerning the purchase of World Series tickets. Although Claimant contends that he did not provoke or initiate a fight with Sepulveda, he admits that he hit and pushed Sepulveda. It is undisputed that Sepulveda was subsequently taken by ambulance to the hospital for emergency treatment.

To the extent that the record consists of conflicting testimony concerning the above incident, there is no evidence to indicate that the hearing officer's credibility determination was arbitrary, unreasonable or capricious. To the contrary, in view of the severity of the beating administered to Sepulveda, the disparity in the size and weight of the two men, and the corroborating testimony of employees who observed or overheard portions of the incident, the evidence on this record is substantial that Claimant violated the Carrier's rules cited above.

Moreover, the Board has carefully reviewed the entire record and finds the Organization's contentions of procedural irregularities to be without merit. The Claimant was accorded proper notice of the charges and was given a fair and impartial hearing. In view of the fact that no procedural or substantive rights of the Claimant were violated, we find that the Carrier did not abuse its discretion in dismissing the Claimant from service, and accordingly, we deny the claim.

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 29th day of August 1984.