

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
(Western Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electricians A. M. Garcia and J. Ramirez were unjustly treated when they were suspended from service for a period of ninety (90) days commencing October 9, 1981 through January 6, 1982, following investigation for alleged violation of portions of Rules 810 and "G" of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring at approximately 10:45 p.m., October 8, 1981.
2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to:
 - (a) Compensate Electricians A. M. Garcia and J. Ramirez for all time lost during the ninety-day suspension; and reimburse them for loss of vacation, payment of hospital, medical and dental insurance, group disability insurance, and railroad retirement contributions; and the loss of wages to include interest at the rate of six percent (6%) per annum.

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.

At the time of the occurrence giving rise to this dispute, Claimants worked as Mechanical Department electricians at the Carrier's Los Angeles Locomotive Maintenance Plant, Los Angeles, California. On October 12, 1981, Claimants were notified to be present at a formal hearing in connection with their actions at approximately 10:45 p.m., October 8, 1981, when they were allegedly away from their assigned post of duty, off company property and under the influence of intoxicants in violation of pertinent portions of Rules 810 and "G" which state as follows:

"Rule 810 - 'Employees must...remain at their post of duty and devote themselves to their duties during their tour of duty. They must not absent themselves from their employment without proper authority...'"

"Rule 'G' - 'The use of alcoholic beverages, intoxicants, or narcotics by employees..., or being under the influence thereof while on duty...is prohibited...'"

After formal hearing conducted on October 19, 1981, Claimants were assessed a ninety-day suspension.

Claimants both testified that Claimant Ramirez received permission for himself, Claimant Garcia and Electrician Butler to be excused early from their 3:00 p.m. to 11:00 p.m. shift. According to the Claimants, after leaving the property, Claimants stopped at a drive-in restaurant where a party was in progress. At approximately 10:45 p.m., Company officers arrived at the restaurant to find employees who were not properly punched out. As the Company truck approached the drive-in, the record indicates that all of the people except for the Claimants and Electrician Butler ran from the parking lot. The Claimants denied that they were intoxicated and stated that they had no reason to run away because they had been given permission by Supervisor Perez to leave the property, and they were therefore on their own time.

Claimants' Supervisor, R. Perez, strenuously denied that he had given the Claimants permission to leave the property prior to the end of the shift. Perez further testified that when he was notified that there was a party going on outside the Company property, he and several other supervisors went to the restaurant, where they discovered the Claimants as well as other employees. Perez stated that there were open liquor containers near the Claimants, and his testimony was corroborated by other Carrier supervisors present who smelled liquor on the Claimants' breath and detected that their speech was slurred.

The Organization argues that the Carrier has not proven the charges levelled against the Claimants herein; that the conflict in testimony between the Claimants and Perez concerning whether Claimants had permission to leave work early should have been resolved in favor of the Claimants because Perez was simply attempting to protect his position as foreman; and that the penalty assessed herein was discriminatory, arbitrary, capricious and excessive.

The limited scope of our review in discipline cases is well known and it is well established that this Board is neither authorized nor constituted to resolve conflicts of testimony or credibility. (See Second Division Awards 8280, 7912, 7955, 8201 and 7973). The Organization herein essentially argued that Supervisor Perez had a motive to deny that he had given Claimants permission to leave early; i.e. he himself did not want to be disciplined for permitting employees to leave before end of shift. However, the Supervisor's possible motive and by the same token, the Claimants' probable interest in protecting their jobs, is not the issue herein nor our basis for review. In the present case, the necessary proof of permission to leave is lacking unless the Board overturns the hearing officer's credibility determination and accepts the

Claimants version of the disputed factual issues. The Board is neither authorized nor constituted to make such credibility determinations. (See Third Division Award 21004, Public Law Board No. 1753, Award No. 1.) The Board must instead inquire as to whether the evidence adduced at the hearing reasonably supports a finding of Claimants' culpability, i.e., that they were under the influence of intoxicants, off Company property, and away from their assigned posts without permission.

In our judgment, there is no showing of unreasonableness, bias, prejudice or predetermination shown on this record to impeach the determination of the hearing officer that events transpired as described by the Claimants' supervisor and three other Carrier supervisors who testified on the property. That being the case, there is substantial evidence, albeit contradicted by the testimony of Claimants, to support findings that they were absent from duty and intoxicated in violation of Rules 810 and "G". We find no grounds upon which we should substitute our judgment for the Carrier's relative to the penalty imposed. 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 5th day of September, 1984.