

The Second Division consisted of the regular members and in addition Referee Ida Klaus when award was rendered.

Parties to Dispute: ( International Brotherhood of Fireman and Oilers  
( The Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler D. R. Ferguson was unjustly dismissed from the service of the Carrier without a fair and proper formal hearing.
2. That accordingly the Carrier be ordered to make the aforementioned D. R. Ferguson whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, customs or law, and compensated for all lost wages plus 6% annual interest on all such lost wages.

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, employed as a Fireman and Oiler, was notified on September 25, 1980 that he was being terminated because of his unauthorized absence since August 10, 1980, in violation of Rules 810 and 33(b) of the Agreement.

Rule 810 states that employes, "...must not absent themselves from their employment without proper authority...Continued failure by employees to protect their employment shall be sufficient cause for dismissal...". Rule 33(b) reads, "...Employees who are absent from duty without authority in excess of ten (10) days, without good and sufficient reason which must be furnished within fifteen (15) days of the date such absence begins...may be terminated without a hearing". The Organization filed a claim protesting as unjust the dismissal of the Claimant without a proper hearing.

The Organization's position is that the Claimant was absent due to an on-duty injury and the Carrier knew this to be the reason because he had been in contact with the Carrier's Claim Department. Alternatively, the Organization argues, even if it is found that the Claimant was in violation of the Agreement, the offense is a minor one which does not warrant dismissal.

The Carrier's main argument is that the claim must be denied because the Claimant clearly violated the stated rules.

It is undisputed that the Claimant was absent beginning on August 10 until his termination on September 25. There is no evidence whatever that the Claimant attempted to notify the Carrier of his absence, or that he had permission to be absent from work. Accordingly, under Rule 33(b), which is self-executing, he was automatically terminated and was not entitled to a hearing.

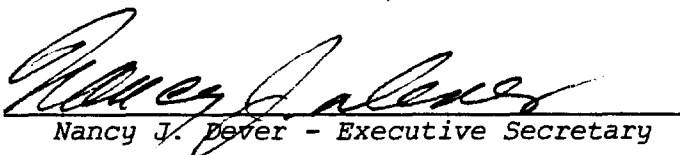
There is no rational support for the Organization's argument that this was a minor violation. The Claimant was away from his job for 45 days, during which time he did not properly contact the Carrier. He was unable to offer any evidence of why he failed to do so. Unauthorized absence from employment is a serious offense, particularly when it continues over such a long period of time. Clearly, he has demonstrated a lack of interest in his employment.

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 9th day of January 1985.