

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company
(Eastern Lines

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) improperly discharged Radio Equipment Installer K. P. Blount from service on July 23, 1982 in violation of the current agreement.

2. That accordingly the Southern Pacific Transportation Company (Eastern Lines) be ordered to restore Mr. K. P. Blount to service as a Radio Equipment Installer with all seniority rights and fringe benefits unimpaired and compensate him eight (8) hours each day at the pro rata rate of pay including eighteen percent (18%) interest compounded each month commencing July 23, 1982 and continuing until the date he is restored to service, both dates inclusive.

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 were given due notice of hearing thereon.

This dispute comes about as a result of the Carrier's finding that the Claimant had absented himself from duty without proper authority and that, as a consequence, he should be discharged from its services on July 23, 1982. Leading to the Carrier's action of July 1982 were two earlier Second Division Awards. Award 8682 of April 15, 1981 ruled that the Claimant, the same as herein, was unjustly dismissed from service following a series of events related to his qualification for a position of Radio Equipment Installer. However, the neutral sitting for Award 8682 was not aware that Award 8550 had been issued on December 17, 1980. The events leading to that earlier award encompassed most of the relevant issues ruled upon in Award 8682. However, Award 8550 had found the Claimant not qualified for the position of Radio Equipment Installer.

Following a series of subsequent events as described in the record, the dispute ultimately came before a U.S. District Court. The Court remanded Award No. 8682 to the National Railroad Adjustment Board for clarification, stating in pertinent part:

"However, this Court is unable to determine whether defendant is within compliance with the various awards of the Board for the reason that those awards appear to be inconsistent. Award No. 8682, issued subsequent to Award No. 8550, reaches a different conclusion on the March 1979 disqualification of employee Kenneth Blount from position No. 37. However, the second award fails to reconcile the earlier result. It is appropriate where clarification is required to remand to the Board so that it may resolve inconsistencies...

* * *

Since this Court has determined for the reasons stated above that the matter should be remanded to the Board, it is apparent that the Award is not enforceable as it stands."

As a result, the parties presented their respective contentions to the Second Division pursuant to the Order of the District Court. However, by the time the dispute herein came before this Board, a decision based upon the Court's Remand Order had not yet been received. Subsequently, the Division, in compliance with the Order of the District Court, has issued Award No. 9779, dated July 27, 1983.

This Board has reviewed the record in great detail and has carefully analyzed the many complex issues having an impact upon this dispute. In their submissions and appearances before this Board, both parties have presented excellent arguments in support of their respective contentions. The key issues herein were vigorously argued with great skill by the panel members of the Board so that Neutral sitting herein was able to more fully grasp the many complexities of the Claimant's dispute. It is in large part due to these many complexities, as well as to the intermingled aspects of the past awards with their resulting confusion and inconsistencies, that the Board finds that it would serve all parties best to restore the Claimant to duty as a Lineman in a geographic area which would not make his restoration to service unduly harmful to him.

Accordingly, the Claimant is to be provided one more opportunity to report for duty within 30 days of notice, without back pay but with seniority restored. His absence for the period involved shall be shown as an absence from duty without pay and not as discipline.

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Award No. 10198
Docket No. 10135
2-SP-EW-'84

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.