

The Second Division consisted of the regular members and in addition Referee Hyman Cohen 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 Electrician E. P. Klein was unjustly treated when he was dismissed from service on January 7, 1982, following investigation for alleged violation of portions of Rule 801, Rule 802 and Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation company (Pacific Lines). Said alleged violation occurring on November 29, 1981, and December 10, 1981.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
  - (a) Restore Electrician E. P. Klein to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages including 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.

The Claimant was employed by the Carrier as a Mechanical Department Electrician at its West Oakland Diesel Shop located in California.

As a result of a formal hearing held on December 16, 1981, the Claimant was dismissed from service for failure to comply with a letter dated December 8, 1981 from W. A. Schwoerer and for being absent without authority from his position as Electrician since November 29, 1981.

The Claimant had established a poor attendance record from April through October, 1981. Since the Carrier believed that the Claimant's illnesses were not bona fide, Assistant Plant Manager T. T. Everly sent a memorandum, dated November 6, 1981 to the Claimant, which included the following instructions:

(a) If he laid off due to illness he was required to present a certificate from a reputable physician that he had been ill before he would be allowed to return to work; (b) by failing to submit such a certificate to the Carrier, he would be prevented from working until a duty clearance was received from the Carrier's Chief Medical Officer; and (c) non-compliance with these instructions would result in more severe action.

After the Claimant's layoff on November 29, 1981 due to "illness", his Supervisor informed him that he would not be marked up for work until he submitted a certificate in accordance with Assistant Plant Manager Everly's instructions. In a letter dated December 8, 1981 from Plant Manager Schwoerer the Claimant was informed that an appointment for a physical examination had been made for him on December 10, 1981. The letter set forth the place and time of the appointment and indicated that the Carrier would pay all expenses, including transportation. The Claimant failed to show up for the physical examination.

The record warrants the conclusion that the Claimant did not follow instructions to report for his physical examination and has been absent without authority since November 29, 1981. In considering the penalty, the Board is of the view that extraordinary circumstances are present in this case. On November 29, the Claimant's wife left him with an infant barely three (3) months old and two (2) young children to care for. Although the Claimant reported that he was available for work after November 29, he could not do so until he submitted a certificate from a physician. Such a certificate could not be obtained because he was not ill. At the time, he was undergoing extreme emotional distress caused by severe personal and family problems. Based on the record, it is the Board's judgment that the Claimant's failure to report to the physical examination on December 10 (and the formal hearing on December 16) was not due to insubordination or indifference to duty; rather, it resulted from serious emotional distress.

Due to the unusual mitigating circumstances present in this case, the penalty of dismissal from service is deemed to be excessive. Accordingly, the Claimant's dismissal is reduced to a disciplinary suspension; and he shall be entitled to reinstatement with seniority unimpaired, with no compensation for time lost. Before concluding, it should be underscored that the Claimant's conduct cannot be condoned; indeed, repetition of such conduct, despite his personal problems, shall justify the penalty of dismissal from service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.