

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Southern Pacific Transportation Company
(Eastern)

Dispute: Claim of Employees:

Claim in behalf of Machinist G. D. Bushnell for reinstatement with lost wages at 10% interest, credit for time lost with respect to vacation and holiday time and removal from his record of all the charges against him.

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 has been employed as a Machinist at the Carrier's facility located in Houston, Texas for approximately five and one-half (5 1/2 years). Following an investigation that was held on February 8, 1982, the Claimant was dismissed from service for acts of insubordination during the week of January 18, 1982 and because he was absent from his job assignment without proper authority on January 25, 1982. In the commission of these offenses, the Claimant was found to have violated Rules 801, 802 and M810 of the General Rules and Regulations of the Carrier.

The record discloses several episodes during the week of January 18, 1982 in which the Claimant committed several infractions of the applicable Rules. On or about January 19, 1982, Operator-Trainer Ogilvie instructed the Claimant to go to Fulshear, Texas and to meet another mechanic and pick up some parts to repair a zipper spiker located at Eagle Lake, Texas. The Claimant left to get the parts and ended up in Sealy, Texas. The mechanic whom the Claimant was to meet at Fulshear, Texas waited until 8:00 p.m. that evening after which he left to go home. By not getting the parts, the machine could not be used the following day and several hours were lost getting it repaired.

On Wednesday morning, January 20, 1982 Work Equipment Supervisor Self sent the Claimant to Extra Gang 268 so that Operator Trainer Cook could line him up for work. He was told to get some tools and to be up on the track with the machine, but when Supervisor Self came up to the track, the Claimant could not be found. Turning to January 24, the Claimant was instructed by Supervisor Self to be on the track with the other employees when the rail was being removed and "machines were being placed on the track". When Supervisor Self showed up on January 25 and the rails were being torn out, the Claimant again could not be found. Furthermore, contrary to Supervisor Self's instructions, the Claimant went to "downtown Richmond" to get parts although Supervisor Self had not given him a purchase book or directions to buy parts.

Moreover, while being assigned to Rail Gang 268, the Claimant was instructed by Operator Trainer Cook to stay on the track with the tools to keep the small machines adjusted. On "numerous occasions" during the week of January 18, 1982, the Claimant was not with the machines but engaged in conversation with the "other mechanics". There were also instances when a machine would "go down" and the Claimant was not at his assigned work station. This caused Operator Trainer Cook to assign another mechanic to do the work or he would do the work himself.

From these episodes the Board infers that the actions of the Claimant during the week of January 18, 1982 did not merely stem from a "misunderstanding" due to confusion by the Claimant as to who were his immediate supervisors. The actions of the Claimant show insubordination, an indifference to duty, "negligence affecting the interests of the Company", and being absent from employment without proper authority. These infractions are violations of Rules 801, 802 and M810 of the General Rules and Regulations of the Carrier.

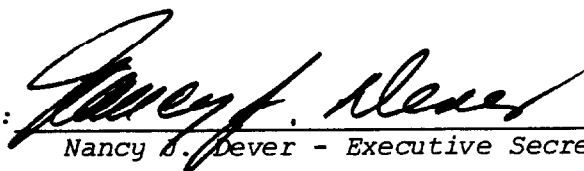
In reviewing the record there are other factors present which must be given some weight. The Claimant's first day of assignment "with the A & WE" Department was January 15, 1982. Although the bid calls for a qualified mechanic, the Claimant was new to the Department and unfamiliar with its procedures. In addition, it is significant to point out that the principle of progressive discipline was not followed by the Carrier. This principle requires that the employer withhold the final penalty of dismissal from errant employees until it has been established that the employee is not likely to respond favorably to a lesser penalty. It should also be noted that there is nothing in the record to indicate that the Claimant has been an unsatisfactory employee during his service with the Carrier. Accordingly, the penalty imposed by the Carrier is excessive. It is the Board's judgment that the Claimant is to be reinstated with seniority and other rights unimpaired, but without back pay.

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 19th day of June, 1985