

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10622
Docket No. 10757
2-SP-MA-'85

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

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

Dispute: Claim of Employees:

1. That, the Carrier improperly dismissed Machinist M. A. Salazar (hereinafter referred to as Claimant) from service on September 15, 1983.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired with compensation for all wage loss.

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 as a Machinist in the Carrier's Traction Motor Shop, Sacramento Locomotive Works, 3:00 PM to 11:00 PM on July 25, 1983, the date of the occurrence involved in this dispute.

At about 10:00 PM on that date he was observed in the Carrier's Electrical Shop by a Patrolman of the Carrier's Police Department removing copper electrical wire from a cable storage drum. At the time of the confrontation the Patrolman saw two rolls of cable on the floor, one secured with a bundle tie and one unused bundle tie on the floor. On top of one roll of cable was a hack saw and fresh copper filings were on the floor near the roll.

The Patrolman asked and received permission to search and secure the Claimant's automobile parked close by. A roll of copper was discovered in the trunk of the automobile.

On July 29, 1983 the Claimant was notified to be present for formal hearing in connection with his alleged absence from his post of duty without permission at approximately 10:00 PM, July 25, 1983, alleged dishonesty in being observed removing electric cable from a storage drum and having a roll of cable in the trunk of his automobile.

When the hearing convened, the Claimant was not present but about midway he appeared. He was given benefit of the proceedings prior to his arrival and opportunity to ask questions in regard thereto.

In the ensuing developments he admitted that he considered removing the cable, would have tried to sell it and with the money pay for the support of his chemical dependency habit.

On September 15, 1983, the Claimant was notified of his dismissal for absenting himself from his post of duty without proper authority, removing and having in his possession electric cable from the Electrical Shop in violation of Rules 801 and 810, General Rules and Regulations of the Southern Pacific Transportation Company.

Rule 810 requires employees to remain at their post of duty and devote themselves exclusively to their duties during their tour of duty.

Rule 801 provides a prohibition against dishonesty.

The thrust of the Organization's position is twofold. One, that the Claimant was not in possession of all of his faculties due to chemical dependency, that the Carrier's employee assistance program so recognizes and that the Claimant was not responsible for his actions this contention must be rejected. The position was not joined on the property. At this juncture it is appropriate to note, however, that the Patrolman's testimony was that the Claimant's response was coherent and one of surprise at the time of confrontation, which means that the Claimant knew what he was doing.

The other, that the Claimant did not remove any of the material from the Carrier's property and, therefore, was not guilty of removing and having in his possession cable from the Electrical Shop must be rejected. We know from the evidence in the Transcript of the hearing that the Claimant's assignment was in the Traction Motor Shop and that the Foreman did not send the Claimant to the Electrical Shop. He was there under questionable circumstances which turned out to be that he was removing copper cable from a storage drum and had a roll of it in the trunk of his automobile. That he had not removed it from Company property is of no consequence.

A similar position was advanced in the dispute heard in Second Division Award No. 7768. There the Board held:

"The Organization takes the position that the Claimant could not be charged with stealing because he did not leave Carrier's property. The Carrier need not show that the Claimant left the property to prove theft or intent to steal. The Carrier need only show substantial evidence of Claimant's intent to convert this property to his own control, use or possession...."

The Claimant had Company property in his possession, and was intending to sell it to support his chemical dependency habit; he so admitted.

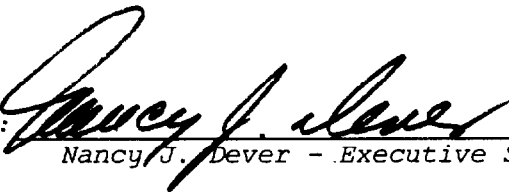
The Claimant admitted all of the material elements of the charges against him. Even if the Carrier had failed in its proof, which is not the fact, the admission removed the necessity of proof of the charges. The claim will be denied in its entirety.

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 23rd day of October, 1985