

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10864
Docket No. 10844
2-SP-EW-'86

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

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

Dispute: Claim of Employee:

1. That under the current Agreement, Mechanical Department Electrician L. T. Woods was unjustly treated when he was dismissed from service on November 15, 1982 following investigation for alleged violation of portions of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring from January 1, 1981, to October 29, 1982.

2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to restore Electrician L. T. Woods to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages, including interest at the rate of 6 per center (sic) (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 record shows that at 7:00 A.M. on October 29, 1982 the Claimant was removed from service for alleged violation of Rule 810. The Rule reads:

"Continued failure by employes to protect their employment may be sufficient cause for dismissal."

On November 2, 1982 the Claimant was notified to attend an Investigation in connection with his being absent from his position from October 23 to and including October 29, 1982 and other absenteeisms to that date. It was accorded on November 8, 1982.

The period October 23 to and including October 29 embraced two rest days, Tuesday and Wednesday, October 26 and 27. His assigned hours were 7:00 A.M. to 3:00 P.M. The layoff reports show that on October 24 and 25 the Claimant laid off for personal business. On October 25 and 29 he laid off sick, the latter date his layoff was at 5:00 A.M.

During the Investigation the Claimant testified that he called in sick on each of the four workdays. While he gave no reason other than being sick, he testified that he had an inner ear infection during that period. When asked for an explanation for the infection, he responded:

"Here do you want that doctors slip?"

The Investigating Officer's response was:

"We will take the Doctors slip later on. My question is why repeatedly in the latter part of October, if you had an inner ear infection, at 5am in the morning, two hours commencing your shift, you would lay off for one day only?"

The Claimant responded:

"Because I was sick all night and when I get up I would still be sick and I would call in and lay off."

Thereafter the Claimant's Representative was given opportunity to ask questions of the Claimant. After some preliminaries about the Claimant's practices of laying off, he asked the Claimant if he had proof and medical records. The Claimant responded that he did. However, the proof and medical records were not at that time presented.

The Carrier's General Foreman at the facility where the Claimant was employed testified that during October 1982 the Claimant lost four days prior to being removed from service, and in the months tabulated next below lost the number of days indicated:

1982				
September	7 days lost	March	2 days lost	
July	3 "	February	1 "	
June	4 "	January	5 "	
May	1 "			
April	1 "			

The General Foreman testified that the absentee rate for the Claimant during that period was 13.2%. The absentee rate for the facility was 8%, not including holidays and vacation.

The testimony by the Foreman indicates that the Claimant's absentee rate in 1981 was 13.6%. On December 6, 1981 the Claimant was interviewed and informed of his high absentee rate and a memorandum in regard thereto was placed in his personal file on December 16, 1981. In 1980, his absentee rate was reported to be 8.6%.

His record indicates he received forty-five demerits on March 15, 1977 for violation of Rule 810 and on November 25, 1977 he was dismissed for violation of the same Rule. He was reinstated on June 23, 1978 on a leniency basis. The Claimant acknowledged that he had been instructed on Rule 810 approximately six times during his more than 20 years of employment.

The Claimant acknowledged that his absentee record was not acceptable but added in explanation that if he is sick, he is sick, that he could not schedule when he was going to be sick, nor when he had to be absent due to accidents and that in the past his wife and his father had been sick and required his attention. He said that he had to call in on a day-to-day basis for those reasons.

On November 15, 1982 the Claimant was notified that he was dismissed.

In the correspondence exchanged between the parties at the highest level of appeal on the property, the Organization presented doctor slips and medical records for consideration by the Carrier. The correspondence indicates that the parties discussed the Claimant's problems. In letter dated February 28, 1984 following a conference, the Carrier stated to the General Chairman in pertinent part:

"It was agreed that we would wait for a reasonable period of time for any support in favor of the claimant to surface. That understanding is here confirmed."

In a letter dated March 15, 1984, the Carrier stated to the General Chairman, in pertinent part:

". . . It was acknowledged that he has had medical problems in the past, but no evidence was introduced into the record that these medical problems disabled him from regular attendance at work. We did agree that we would hold the case open for a reasonable period of time so that any support that might be in favor of the claimant, in particular medical evidence that would indicate he was disabled from coming to work, might surface. To date there is no such evidence. . ."

This is, of course, beyond the Transcript of the Investigation accorded the Claimant and, on balance, is a generally acceptable endeavor by both parties to settle the dispute, although a settlement did not come to pass in this dispute. It was noticed to this Division of the Adjustment Board in the Organization's letter dated August 30, 1984.

We have reviewed the medical records, but we have no way of knowing whether they were those alluded to at the Investigation. They are part of the record discussed by both parties and we are obligated to consider them.

None of the records shows that the Claimant was medically unable to work on any of the dates he was charged with being absent and none shows support for reasons he gave in explanation for his other absences.

While we are not unsympathetic to the Claimant's problems, if truly authentic - and we do not necessarily say they are not - our function in discipline cases is not to substitute our judgment for that of the Carrier, nor to decide the case in accord with what we might have done had it been ours to determine, even in an earlier time frame. We do not have that opportunity under the existing appellate procedures in this industry.

Rule 25 cited by the Organization may provide for excused absences, even for illness and other legitimate reasons, but the number of reasons is not limitless. The Carrier need not be handicapped by an employee who cannot be counted on to be present for scheduled work.

We have carefully reviewed and considered all of the contentions advanced and argued by the Organization in support of the Claimant's reinstatement. However, we find that none fatally flaws the discipline of dismissal assessed against the Claimant. There is sufficient evidence in the Transcript of the Investigation to support the Carrier's decision. The Claimant's absenteeism was excessive.

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 28th day of May 1986.