

The Second Division consisted of the regular members and in addition Referee Ronald Nelson 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 Jerry L. Brundige was unjustly treated when he was dismissed from service on September 21, 1984 following investigation for alleged violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on August 17, 1984.

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician Jerry L. Brundige 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 the loss of wages to include 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 record reflects that the Claimant entered Carrier's service on September 11, 1978, at Carrier's Los Angeles, California, Repair Plant.

On August 17, 1984, the Claimant was working as an Electrician at Carrier's Los Angeles Plant when he became involved in an argument with a fellow employee.

The fellow employee was discussing a union matter with a third member of the same union for which he is a local official. There was a table or desk between the fellow-employee and the person with whom he was talking, the third party. As the fellow-employee stepped back to turn to leave the room in which the discussion took place, the Claimant entered the room. The record shows that there was some contact with the person of the Claimant by the fellow-employee, and that the fellow offered apologies to the Claimant for the contact, and left the room.

A short time later, the fellow-employee was driving his lift truck while on duty when he was flagged down by the Claimant. Words were exchanged between the two employees, and the brief exchange apparently came to an end.

The fellow-employee reported the incident to a Carrier Supervisor and an inquiry into the matter commenced. The Carrier's Supervisor was aware of past medical problems of the Claimant and he removed the Claimant from service pending a medical evaluation.

The Claimant reported for work the next day, August 18, 1984, and shortly after commencing the shift he reported to Carrier's Supervisor that he had been injured the previous day, August 17, 1984, by the fellow-employee. The alleged injury took place in the room in which the fellow-employee was conversing with the third party. The Claimant alleged that the fellow-employee, in leaving the room, bumped into him, and with his fist struck him (the Claimant) in the groin, specifically the testicles. He named several witnesses to the incident.

After the Claimant was taken to a local hospital for medical attention, which revealed no medical evidence of injury or that he was incapable of working, the inquiry into the matter continued.

As a result of the inquiry, the Claimant was cited for a formal Hearing for his actions on August 17, and 18, 1984.

The formal Hearing was held on August 29, 1984. On the basis of the evidence adduced at that Hearing, which established the responsibility of the Claimant, for falsely reporting a personal injury on August 17, 1984, a violation of the portion of Carrier's Rule 801 pertaining to dishonesty, the Claimant was dismissed from Carrier's service on September 21, 1984. Rule 801 of the General Rules and Regulations of the Carrier provide, in pertinent part:

"Employees will not be retained in the service who are ... dishonest . . . quarrelsome or otherwise vicious . . . "

Thereafter, the appeal procedures were exhausted on the property up to and including the highest Officer designated by the Carrier to receive such appeals, the Claim of the Employees being denied at each level of appeal.

On appeal, the Organization contends that the Carrier's dismissal of Claimant was arbitrary and capricious. The Organization, in its Submission contends that the Carrier's actions were pre-determined and that the Carrier's Hearing Officer was prejudicial against the Claimant because he accepted the testimony of certain witnesses which was detrimental to Claimant's position.

Specifically, the Organization contends that the testimony of certain witnesses at the Hearing should have been disregarded by the Hearing Officer because, according to Claimant these witnesses were themselves engaged in prohibited activity at the time of the alleged incident.

Initially, the Organization has challenged the impartiality of the Hearing Officer. We have carefully examined the transcript of the proceedings and we must conclude that the Hearing was conducted in an equitable fashion. Claimant, through his representatives, was given ample opportunity to examine all witnesses and evidence. There was no defect in the hearing process.

The thrust of the instant Claim, as ably presented by the Organization, appears to interpret that the Carrier's action in discharging the Claimant was as a result of the Claimant and the fellow employee engaging in an alleged argument and threatening of personal harm activities which are also prescribed by Rule 801. Although the Hearing Officer, through the investigative process, examined the alleged exchanges between the Claimant and the fellow-employee, the record is clear that the Claimant was discharged for filing a false Employee's Report of Accident.

There is no evidence in the record, save the Claimant's testimony, that the accident and resulting injury occurred as claimed in the Report of Accident. Those witnesses' (cited by the Claimant) testimony did not corroborate the Claimant's version of the incident. The results of the medical examination also failed to disclose any injury as described by the Claimant.

In cases such as the instant matter, where there is a factual dispute, this Board has consistently held that it will not substitute its judgment for that of the Hearing Officer, absent a clear showing of arbitrary, capricious or unreasonable action on the part of the Hearing Officer. The Hearing Officer was present and able to observe the conduct and demeanor of the witnesses and there is substantial evidence in the record to support the Hearing Officer's determination. Accordingly, this Board will not substitute its judgment for that of the Hearing Officer.

For the reasons cited above, this Claim is 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 20th day of May 1987.