

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. Under the current Agreement, Mechanical Department Electrician D. A. Morgan was unjustly treated when he was dismissed on August 6, 1985 from the service of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician D. A. Morgan to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, with loss of wages, including interest at the rate of ten percent (10%) 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 employees involved in this dispute are respectively carrier and employees 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.

Following his incarceration the Claimant returned to work with the Carrier in February 1984 as part of a work-furlough program. Before resuming his duties and as part of the Carrier's agreement to participate in the work-furlough program, the Claimant signed an undated letter of resignation. Between February 1984 and July 15, 1985, the Claimant worked under provisions of the work-furlough program. As of July 16, 1985, Claimant was absent from work without authority. On August 6, 1985, the Carrier dated the letter of resignation and separated the Claimant from its employment.

The Claimant contends, without any documentation, that the undated letter of resignation was to have been destroyed six (6) months from his return to work in February, 1984. Without support, other than Claimant's assertion, a six (6) months' limitation cannot be read into the letter of resignation.

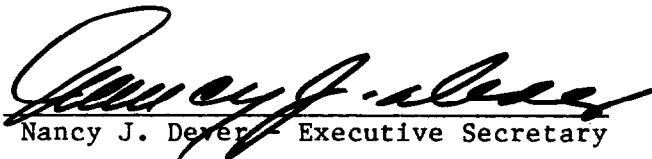
The Organization has not convincingly established that any provision of the Agreement between the Carrier and the Organization prevented Claimant from agreeing to link the undated letter of resignation with his return to employment under the work-furlough program. Clearly, such an arrangement was in the Claimant's interest. The Carrier acted with just cause, and without violating the Agreement, when it exercised its option to date the letter after Claimant absented himself without authority. Given the circumstances of this case, seventeen (17) months was not an unreasonable period of time for the Carrier to retain the undated letter of resignation.

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 6th day of July 1988.

**DISSENT OF LABOR MEMBERS
TO
AWARD NO. 11509, DOCKET NO. 11359
REFEREE RONALD L. MILLER**

The Majority Opinion contained in Award No. 11509 is in direct contradiction with previously issued precedent setting awards of the various Divisions of the N.R.A.B. and with total indifference to the applicable Agreement.

Specifically, we direct the Majority's attention to that part of their findings appearing as follows:

"The Organization has not convincingly established that any provision of the Agreement between the Carrier and the Organization prevented Claimant from agreeing to link the undated letter of resignation with his return to employment under the work-furlough program. Clearly, such an arrangement was in the Claimant's interest. The Carrier acted with just cause, and without violating the Agreement, when it exercised its option to date the letter after Claimant absented himself without authority. Given the circumstances of this case, seventeen (17) months was not an unreasonable period of time for the Carrier to retain the undated letter of resignation."

The above cited findings are without foundation as indicated by recent Second Division Award No. 11514; likewise, dealing with an undated letter of resignation which by comparison properly states in pertinent part:

"...it is our view that if he was deemed to be in violation of Carrier's Rules while employed as an Electrician under the IBEW Agreement the terms and provisions of that Agreement must control in the administration of discipline or dismissal for any employee working thereunder, unless, of course, an authorized IBEW representative agreed otherwise."

The evidence of record before this Board and Award dictum on this issue substantiates beyond any doubt that a travesty of justice has been committed by the Majority. Consequently, the findings and conclusions contained in Award 11509 are perceptibly erroneous, and to which we vigourously dissent.

R. E. Kowalski

R. E. Kowalski, Labor Member

R. A. Johnson

R. A. Johnson, Labor Member

M. Filipovic

M. Filipovic, Labor Member

D. A. Hampton

D. A. Hampton, Labor Member

B. T. Proffitt

B. T. Proffitt, Labor Member