

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. That under the current Agreement, Mechanical Department Electrician R. A. Gutierrez was unjustly treated when he was dismissed from service on August 22, 1986, following investigation for alleged violation of portion of Rule 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician R. A. Gutierrez 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 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.

Over a five (5) month period, the Claimant was absent, late and left work early fourteen (14) times. Following an investigative hearing on this matter, Claimant was dismissed from employment with the Carrier on August 22, 1986, for allegedly violating Rule 810. The Organization contends that Claimant had good causes for the absences, that his supervisor was notified about the absences and that most of the absences were "excused." Therefore, the Organization argues, the discipline was excessive and the Carrier acted in an arbitrary and capricious manner.

During his years of employment with the Carrier, Claimant had been repeatedly counseled, warned and disciplined concerning his absences from scheduled work. Granted that for certain of these absences, Claimant had

good cause. Nevertheless, it is proper for the Carrier to consider Claimant's entire absence record in determining abuse. The Carrier is entitled to reasonable assurance that Claimant would work scheduled hours. Claimant's record does not provide that assurance.

The Carrier offered Claimant a last chance opportunity to return to work on condition that he correct this pattern of misconduct. Given Claimant's record, this leniency reinstatement offer was fair and should have been accepted. Claimant shall be returned to employment with the Carrier, with seniority unimpaired but without backpay.

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 October 1988.