

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11625
Docket No. 11530
89-2-88-2-4

The Second Division consisted of the regular members and in addition Referee Paul C. Carter 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 B. B. Murphy was unjustly treated when he was dismissed from service on October 22, 1986, following investigation for alleged violation of portions of Rule 801 and Rule 802 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 (sic) B. B. Murphy 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.

The record shows that Claimant was employed by the Carrier as an Electrician at Carrier's Sacramento Locomotive Works, Sacramento, California.

On September 5, 1986, Claimant was notified to attend a formal Hearing to be held on September 17, 1986:

"...to develop the facts and place responsibility, if any, in regard to your alleged violation of Rules 801 and 802 of Southern Pacific Transportation Company's Rules and Regulations, those parts reading respectively:

"Rule 801: Employees will not be retained in the service who are....quarrelsome or otherwise vicious...

Any act of hostility...is sufficient cause for dismissal...

Rule 802: Courteous deportment is required of all employees in their dealings with...each other. Boisterous...language is forbidden.

These alleged violations may have occurred in connection with you threatening Mr. William H. Pohle, Jr., an attorney for the company, with physical violence at approximately 10:45 AM, August 27, 1986."

The Investigation was postponed at the request of the Organization and was conducted on October 1, 1986. A copy of the transcript of the Hearing has been made a part of the record. On October 22, 1986, Claimant was notified of his dismissal from Carrier's service.

We have reviewed the transcript of the Hearing and find substantial evidence in support of the charge against the Claimant. The Hearing was conducted in a fair manner. None of Claimant's substantive procedural rights was violated. We note that some contention is made that Claimant was furloughed at the time of the occurrence and was not an employee of the Carrier. If the Claimant were on furlough, as contended, he maintained an employer-employee relationship, with the right to return to the service. The Carrier had the right to terminate the employer-employee relationship.


There is no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1989.