

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Brotherhood of Firemen and Oilers
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

1. That Laborer Joseph Torres was unjustly treated by the Carrier when he was dismissed from service on November 14, 1984 after a hearing held in absentia on November 13, 1985.

2. That accordingly, the St. Louis Southwestern Railway Company compensate Mr. Joseph Torres at the pro-rata rate of pay of his position from November 14, 1985 until such time as he is returned to service. Also he should be made whole for all vacation rights, and for all health and welfare and insurance benefits, for pension benefits including Railroad Retirement and Unemployment Insurance and any other benefits that he would have earned during the time he was held out of service. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 16% per annum compounded annually on the anniversary date of this claim.

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 Claimant had been regularly employed at the Pine Bluff Locomotive Maintenance Plant of the Carrier, and had a seniority date of February 26, 1979. On October 21, 22, and 23, 1985, the Claimant failed to report to work and neglected to call in to give a reason for his absence. On October 23, 1985, the Carrier sent a letter to the Claimant, charging him with a violation of Rule 810 by failing to protect his job assignment, and advising him that a hearing was scheduled for October 30, 1985, on this charge. On October 24, 1985, at 8 P.M., the Claimant's mother called the Carrier to say that her son was off on personal business. The Claimant returned to work on October 26, 1985, and requested on October 29, that the hearing scheduled for October 30, 1985, be postponed until November 13, 1985. The request was granted, but on

November 1, 1985, the Claimant allegedly incurred an injury while on duty and failed to attend the investigatory hearing on November 13.

On November 14, 1985, the Carrier dismissed Claimant from service, charging him with violating Rule 810, which reads:

"Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority....Continued failure by employees to protect their employment shall be sufficient cause for dismissal..."

In the testimony presented before this Board, the Claimant introduced no evidence that he had, himself, notified the Carrier of his intent to be absent on the dates in question and had secured the proper permission to do so. Neither had he advised the Carrier that he would be unable to attend his investigatory hearing on November 13, 1985, even after that hearing had been rescheduled from October 30 to convenience him. In a similar case on the property (Award No. 170, Special Board of Adjustment 280) the Board finds:

"The Board notes that it has long been recognized that employers, such as Carrier herein, must rely on the attendance of their employees in order to perform their normal business function. The only excuse that an employee has for not at least reporting his intended absence or an emergency absence to the employer, is an urgent and unforeseen circumstance which did not exist in this case."

Absent any medical evidence that the Claimant was physically unable to report to work, and lacking any other testimony regarding his irregular attendance, the Board finds Claimant guilty of failure to protect his position and denies the claim.

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 22nd day of March 1989.