

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin 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 Helper Lucy Yow was unjustly treated when she was dismissed from service on March 1, 1990, following investigation for alleged violation of portions of Rules 801, 802 and 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 Helper Lucy Yow 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 Claimant, an electrical helper in service since 1979, was dismissed as a result of an Investigation held on January 30, 1990. The Claimant was injured on the job during October 1989, and during December 1989, sustained additional injuries to her elbow and shoulder.

It is the Carrier's position that the Claimant absented herself from her job without permission for 3 hours on December 4, 1989. She did not have permission to leave her work area. In addition, on December 5, 1989, the Claimant injured herself and would not complete the required 2611 Report and

did not answer questions regarding this alleged incident. Just because the Claimant may have been caught up with her work, this does not relieve her of the responsibility of protecting her assignment or notifying her Supervisor. Even if the Claimant has permission on a previous job to lie down, as her medical condition warranted, this is not pertinent to this case. Contrary to the Organization's claim that this was a double jeopardy matter, the Supervisor merely read Rules 802 and 810 to the Claimant, and this amounted to only educational counseling. Therefore, discipline was warranted but not assessed until after the formal Hearing. The Carrier has proven the charges against the Claimant and particularly in light of her prior record, the dismissal should be upheld.

The Organization argued that the Claimant had injured herself previously and was on a light duty status which allowed her to rest as she saw fit. When she bumped her elbow and hurt her shoulder, she went to the rest-room in order to find some relief, at which point the Carrier harassed the Claimant to fill out the 2611 Accident Report. By the Rules the Claimant has until the end of the shift to fill out this Report. Because of the harassment and mental state of the Claimant, there was no insubordination involved. The Organization argued that this is a matter of double jeopardy, that the Claimant had been disciplined on the day of the alleged incident and, therefore, cannot be disciplined further later on. In any event this is an arbitrary and capricious exercise of management discretion. The Claimant was on light duty and was written up previously and, therefore, cannot be charged again.


Upon complete review of the evidence, the Board finds that this is not a case of double jeopardy. The Claimant was not disciplined previous to the Investigation and, in fact, was charged in that Investigation with two violations of Carrier Rules. Particularly, the Claimant was placed on notice in Second Division Award 10812 that the Carrier has the right to have its accident investigation forms completed properly. It is clear to this Board that the Claimant refused a reasonable instruction by her Supervisor and engaged in self help activity, which amounts to insubordination. There is no excuse for the Claimant not to at least answer questions regarding her accident so that the Carrier could make an appropriate record of the incident. Bearing in mind the proven Rules violations by this Claimant and her admittedly poor prior record, the Board finds that the dismissal of the Claimant is appropriate and, therefore, the claim will be denied.

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 7th day of August 1991.