

The Second Division consisted of the regular members and in addition Referee Robert O. Harris 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 G. D. Dulany was unjustly treated when he was dismissed from service on October 27, 1988, following investigation for alleged violation of portion 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 G. D. Dulany 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 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 employee 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.

Claimant, who had been employed as an electrician, was furloughed on November 12, 1981. On September 22, 1989, Carrier wrote Claimant advising that a position was available and he was being recalled to service. That letter was sent to Claimant's last known address, via certified mail - return receipt requested, and was returned to the Carrier marked "Refused, Fwd Expired." On October 11, 1989, the Carrier sent Claimant a letter advising him to be "present at a hearing to develop facts and place responsibility, if any, in regard to his alleged absence from duty without proper authority" since October 6, 1989, in accordance with Rule 810 which reads in pertinent part:

"Employees must report for duty at the prescribed time and place.... They must not absent themselves from their employment without proper authority.... ... failure by employees to protect their employment shall be sufficient cause of dismissal."

Claimant did not attend the hearing and the Carrier dismissed him from service, sending him a notice to that effect to his last known address on October 27, 1989, which was also returned to the Carrier undelivered.

On November 6, 1989, Claimant appeared at the Plant Manager's office in Eugene, Oregon, and notified the Plant Manager of his new address. On December 13, 1989, the Organization requested that Claimant be restored to service and by letter dated mistakenly January 2, 1989, which was mailed on January 3, 1990, the Carrier responded to this request, concluding:

"It is unfortunate that Claimant did not notify the Carrier two (2) weeks earlier and give his new address, however, Carrier feels that a precedent has been established in the handling of these types of dismissal and Claimant can not be treated any differently."

Carrier apparently did not contact Claimant for eight years and then expected a response within two weeks. Claimant did not know that the Carrier was attempting to contact him, yet when he settled at a permanent location he did notify the Carrier of his new address, without any knowledge that a recall notice was even likely. Carrier's expectation that it would have an up-to-date address for each of its employees after eight years furlough is unrealistic in the circumstances of this case. While the Carrier is correct that the general rule must be followed, in this case its failure to reconsider the situation when the facts were brought to its attention in a timely fashion, deprived Claimant of a fair hearing. Rule 29(d) states that employees must be "available within a reasonable time" and the Board concludes that in the circumstances of this case, the two weeks given the Claimant was not a reasonable time. Claimant will be recalled, if he is available and fit for service, with seniority and other benefits unimpaired, but without pay for time lost. All record of the discipline will be expunged from Claimant's record.

A W A R D

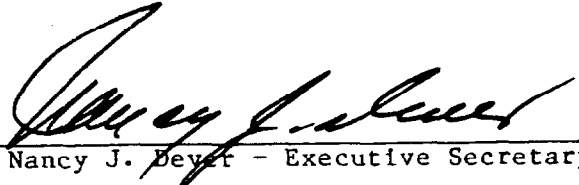
Claim sustained in accordance with the Findings.

Form 1
Page 3

Award No. 12251
Docket No. 11978
92-2-90-2-93

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January 1992.