

The Second Division consisted of the regular members and in addition Referee Kay McMurray 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 E. A. Gutierrez was unjustly treated when he was dismissed from service on December 12, 1990, 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 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 were given due notice of hearing thereon.

Claimant was notified by letter dated October 19, 1990, to be present on November 13, 1990, prepared to participate in a formal Hearing to develop the facts in regard to his alleged violation of Rule 810 of the Carrier's General Rules. The alleged violations occurred in connection with excessive tardiness and loss of time from January 4, 1990, through October 19, 1990. Following an appropriately conducted Hearing on that date, he was notified on December 12, 1990, that he was dismissed from service. The pertinent parts of Rule 810 read:

"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 . . .

Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

The record reveals that Claimant was absent 126.75 hours during the time period outlined in the charge. During testimony at the Hearing he agreed that the record was probably accurate and that there was no doubt that it constituted excessive tardiness. Further, the record reveals that the Claimant had a long history of absenteeism. There were numerous times when he was disciplined for violations of Rule 810. Over a ten year period he was given educational talks on four different occasions, the last on August 23, 1990. He received a written reprimand in 1980. On February 6, 1986, he was suspended for 15 days and in August 1986, he was dismissed from service following a Hearing. That dismissal was the subject of a Hearing before this Board. In Second Division Award 11592, the Board returned him to service without backpay on a last chance basis. That decision reads in part:

"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 his 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."

It is clear from the foregoing and the entire record that there have been serious violations of Rule 810 over a period of time. In the interest of the operation and consideration for other employees who are inconvenienced by such absences, such actions have long been considered a just cause for dismissal.

The Organization's position cites family considerations including a separation from his wife as underlying the problem. It points out that drug and alcohol problems are given rehabilitation assistance and believes that the same consideration should be shown to Claimant. Further since his dismissal, the Claimant and his wife have been under counseling for marital problems and the counselor advised the Carrier that Claimant is stable enough to return to work at this time.

The record reveals that the Carrier has long had an Employee Assistance Program for its employees. The purpose, as advertised to all employees, is to help employees and family members who are adversely effected by drugs, alcohol, or personal problems in any area of their lives. The use of the program is permissive and the record is silent regarding the question of why Claimant did not take advantage of the program or any other program prior to the current dismissal. Certainly we cannot hold the Carrier at fault for the lack of such action by Claimant.


In view of the foregoing and the entire record we conclude that the Carrier was well within its rights when it terminated the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1992.