

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12761
Docket No. 12646
94-2-93-2-13

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company

STATEMENT OF CLAIM: "Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician J. H. Urena was unjustly treated when he was suspended from service for a period of seven (7) days beginning March 29, 1992 through and including April 4, 1992, following investigation for alleged violation of portions of 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 compensate Electrician J. H. Urena for all lost wages due to the seven (7) day suspension, 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 to include 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 employee 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 was regularly employed by Carrier as a Mechanical Department Electrician in Carrier's Motive Power and Car Department in West Colton, California. By letter of January 8, 1992, Carrier charged Claimant with failure properly to inspect outbound consist IWOCOXM29, for the #4 traction motor being cutout on unit SP 9612 on Sunday December 29, 1991 -- a violation of Rule 802. Rule 802 states in pertinent part that "[i]ndifference to duty or to the performance of duty will not be condoned."

A hearing was held on March 6, 1992. Following the hearing, Claimant was notified that he had been assessed an actual suspension of seven days.

It is Carrier's position that Claimant failed to notify his supervisor that there was a problem on unit SP 9612, the middle unit of a three-unit consist, and that his failure resulted in the consist leaving the yard with the unit's motor cut out. The Organization maintains that Claimant followed standard procedure for his yard, notified his supervisor of the problem, and received an acknowledgement from his supervisor that he understood the notification.

A review of the transcript of the Investigation does not provide sufficient probative evidence to support Carrier's position. Organization witnesses support Claimant's statement that the problem was reported to his supervisor.

Testimony by Carrier's witnesses suggests that several other people, including the train crew, would normally also have reported the problem with the consist, and confirm as well that it was standard procedure in the West Colton yard for employees orally to notify the supervisor of any problems with power units. The only testimony directly contradicting Claimant's defense is that of the supervisor involved. In light of the fact that an admission by the supervisor that Claimant had attempted to inform him of the problem would have implicated the supervisor himself in what appears to be a chain of missed responsibilities, the supervisor's testimony is, at best, self-serving.

Accordingly, we do not find that Carrier has shouldered its burden of persuasion in this case. The claim is, therefore, sustained, with the exception of the Employees' request for interest on the lost wages. There is no precedent to support such a request, and this Board does not intend to plough new ground in this regard.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Second Division

Dated at Chicago, Illinois, this 13th day of October 1994.