

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23010  
Docket Number MS-23015

Paul C. Carter, Referee

(Albert P. Brisbois  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an **ex-parte** submission on the 25 of March covering an unadjusted dispute between me and the Southern Pacific Transportation Co. (**Sacramento** Division, Store Department) involving the question;

The dismissal from service by Barry **Rubins**, on April 14 1978, and all monies due **me** from this dismissal, caused from this action by Barry **Rubins**."

OPINION OF BOARD: The record shows that the claimant herein entered Carrier's service as a Machinist on December 1, 1971. Be transferred to clerk on May 1, 1972.

On April 14, 1978, claimant was assigned **and** working as a clerk, with **responsibility** for operating a lumber carrier for transporting materials within the Mechanical Shop area. On April **14**, 1978, claimant was notified by the Manager Purchasing and Services:

"You are hereby notified to be present at the Conference Room, Second Floor, General Stores Building, at 10:00 a.m. on April 20, 1978, for a formal investigation in connection with your alleged **being** insubordinate to your supervisor, Mr. **H. C. Rubens**, on April 14, 1978, when you allegedly failed to transport a skid from Store 3 Docks to Box 110 upon his request, which may involve violation of Rule 801 of the General **Rules** and Regulations, that part reading.

Rule 801: '**Employees** will not be retained in **the service** who are.... insubordinate.. . . .'

'Any act of....**misconduct**....**is** sufficient cause for dismissal.'

'You are entitled to representation in accordance with the provisions of the Brotherhood of Railway, Airline **and** Steamship Clerks, Freight Handlers, Express and Station **Employees** Agreement and may bring to the investigation such witnesses as you desire."

The record shows that the investigation was conducted on April 24, 1978, and on May 2, 1978, claimant was notified of his dismissal from service. A copy of the transcript of the **investigation** has been made a part of the record.

A careful review of the transcript of the **investigation** shows that none of **claimant's** substantive procedural rights was violated. The hearing record contains substantial evidence in support of the charge against the claimant. It is well established that in the absence of a real safety hazard, **employees must** comply with the instructions of their **supervisors**, and **then** complain through the grievance procedure if they consider that their agreement rights have been violated or that they have been mistreated.

Based on the record, there is no proper basis for the Board to interfere with the Carrier's action in imposing the discipline that it did.

As we have decided the dispute on its **merits**, it **is** not **necessary** to pass upon the procedural issue raised by the Carrier.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds **and** holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the **Railway Labor Act**, as approved June 21, 1934;

That this Division of the **Adjustment** Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

**Claim** denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, **Illinois**, this 17th day of October **1980**.