



Award No. 15713
Docket No. CL-16547

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6106) that:

(a) The Southern Pacific Company violated the current Agreement between the parties when, on March 31, 1966, it dismissed Mr. J. R. Gonzalez from service based on charges not proved; and,

(b) The Southern Pacific Company shall now be required to allow Mr. J. R. Gonzalez eight (8) hours' compensation at the rate of Relief Clerk Position No. 9 March 18, 1966, and each date thereafter until he is restored to service with all rights unimpaired.

OPINION OF BOARD: On March 18, 1966, Mr. Joe R. Gonzalez was removed from service on charges of violation of Rule 801 and Rule 810. Rule 801 provides that employees who are quarrelsome and vicious will not be retained in service, and Rule 810, states that employees must not absent themselves from their employment without proper authority and must report for duty at the prescribed time and place.

After an investigation convened on March 25, 1966 at which Claimant Gonzalez was also charged with violation of Rule 802, which requires that employees must not enter into an altercation, he was notified on March 31, 1966 that he was dismissed from service for violation of these three rules. This decision was appealed and claim for restoration to service with compensation for time lost was made.

Brotherhood contends that Mr. Gonzalez did not receive a fair and impartial hearing. It maintains that his dismissal was based on charges not proved. It states that Carrier suspended Claimant from service prior to the investigation on unsupported testimony of Car Foreman, B. E. Rose. It also points out that Carrier based its decision of the investigation on uncorroborated testimony of its only witness, Mr. Rose, concerning an altercation with Claimant although this testimony was contradicted by a witness for Mr. Gonzalez. Furthermore, it asserts that the charge of a violation of 810, failure to report to duty on time, was not established. Mr. Gonzalez, it argues, attempted by telephone to report off sick prior to his starting time

and when he failed to reach Carrier, he appeared personally to give notice that he was ill and could not work that day.

Carrier takes the position that the evidence clearly substantiates the finding that Claimant was guilty of conduct forbidden by Rules 801 and 802. It also maintains that he violated Rule 810 because he did not inform any representative of Carrier of his intention not to work March 17, until approximately one hour after his starting time. Furthermore, it states that there was substantial evidence adduced at the investigation to support the penalty of dismissal from service.

The record shows that on the morning of March 17, Mr. Gonzalez attempted to park his car in a prohibited area. He became involved in an altercation with Car Foreman, B. E. Rose, over the parking location of his car. Despite the fact that he was aware that Mr. Rose was a Supervisor, he insisted upon using that parking location. The testimony also shows that a week previous to this incident Mr. Gonzalez was informed that he was not to use this parking area. Although Claimant and his witness contradict some of the statements of Car Foreman Rose, the testimony is convincing that Mr. Gonzalez was quarrelsome, defiant, boisterous, and used vulgar language. We find the record contains substantial probative evidence to support the decision of the investigation that Rules 801 and 802 were violated.

With reference to the question of whether there was a violation of Rule 810, we find that Mr. Gonzalez did not appear to notify Carrier of his proposed absence until one hour after his prescribed reporting time 7:30 A.M. His testimony that he was unsuccessful in notifying Carrier by telephone of his illness may be his explanation for his tardiness in reporting his illness but it does not justify violation of Rule 810.

In view of the fact that Mr. Gonzalez had a fair hearing which produced substantial evidence to justify the finding of violation of Rule 801, 802 and 810, we do not interpret Carrier's disciplinary action as arbitrary or capricious and therefore find no basis for substituting our judgment.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

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