

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23010
Docket Number MS-23015

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Albert P. Brisbois
(
(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 Harry Rubins, on April 14 1978, and all monies due me from this dismissal, caused from this action by Harry Rubins."

OPINION OF BOARD: The record shows that the claimant herein entered Carrier's service as a Machinist on December 1, 1971. He 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: 'Employee 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:

A. W. Pauls
Executive Secretary

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