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PUBLIC LAW BOARD NO. 1795

VICE CHAIRMAN

Award No. 31 /
Case No. 31 /

OFFICE OF GENERAL CHAIRMAN

PARTIES Southern Pacific Transportation Company (Pacific Lines)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT "1. That the Carrier violated the provisions of the current Agreement
OF CLAIM when it dismissed Claimant J.R. Forest from its service, said
action being unusually excessive, and in abuse of discretion.
2. Claimant now be reinstated to the Carrier's service with seniority
and all other rights unimpaired; that he be compensated for all
time lost commencing November 23, 1977 and that charges be ex-
punged from his personal record."

FINDINGS

Upon the whole record after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was charged with violations of Operating Rule 810 (General Rules and Regulations of the Company) by his failure to protect his assignment on sixteen different dates in October of 1977 while assigned as a Carpenter to a B and B gang, headquartered at Davis, California. Rule 810 provides as follows:

"Employees must report for duty at the prescribed time and place....
They must not absent themselves from their employment without proper authority....

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

Following a formal investigation Claimant was dismissed from service of Carrier on November 30, 1977.

The background of this dispute involves an alleged injury to Claimant sustained at work on May 12, 1975. Whether or not such injury occurred and the nature of the injury is

subject to litigation between the Company and Claimant and is not a matter to be determined by this Board. However, following the alleged injury, Claimant suffered from severe back and leg pains and problems. On August 3, 1977, Claimant received a release and return to duty certificate. He was released by Carrier with an adjustment period of thirty days. He returned to work on or about August 15, 1977. His adjustment period ended on September 16, according to his testimony at the hearing. The unrebutted testimony at the hearing indicates that Claimant worked only two days during the entire month of October 1977. His testimony indicates that he or his wife called and asked for permission for his absence on two other days during that month and on the one date he visited a doctor at Carrier's request. He admits, however, confirming Carrier witnesses testimony, that he did not call in on any of the other dates specified in the charge.

Petitioner argues that the discipline assessed in this particular dispute was excessive and unduly harsh. One reason attributed to Carrier's decision on the penalty in this dispute, according to the Organization, is the suit instituted by Claimant against Carrier through the Federal Employer's Liability Act with respect to his injury suffered in May of 1975. Petitioner also argues that the foreman in this dispute admitted that on a number of occasions messages with respect to calls which may have been made by Claimant were not relayed to him and that hence, he was not at all sure about the facts in which the Claimant called in. Petitioner concludes that in view of the serious physical condition which hampered Claimant and the circumstances surrounding his absenteeism the Carrier's decision to dismiss him was improper.

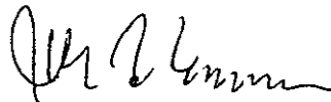
Carrier argues that Claimant was charged with violations of Rule 810 and was guilty of such violations by being absent without authority and continued failure to protect his employment without even bothering to call in and notify Carrier. Carrier asserts that the General Rules and Regulations are posted at the headquarters of Claimant's gang and that he was aware of the particular rule in question.

The transcript of the investigation reveals without question that Claimant was guilty of not informing Carrier that he would be absent on most of the dates in October of 1977.

Further, there is no doubt that he only worked two days during the entire month. In addition as in the transcript of the investigation, it is clear that Claimant was aware of Carrier's rules and the requirement that he either come to work or notify Carrier that he would not be at work. Thus, the question of his guilt is undisputed. The only question before this Board, then, is whether there are mitigating circumstances which would render the ultimate decision of Carrier to dismiss Claimant as being harsh, improper and discriminatory. In our view, there was no abuse of discretion in this instance in terms of the measure of discipline imposed. Whether or not Claimant has suffered an on-the-job injury (which will be determined by the Courts), there is no doubt but that he was cleared to go to work in August of 1977 and indeed, his trial period for adjustment purposes ended in mid September. Thus, in spite of his injury he was required to be at work on the dates specified in the charge in this case. No Carrier is required to tolerate the degree of absenteeism which this particular dispute embodies. It is also relevant to note that Claimant was assigned to perform light duty after his return to work and there was no medical reason indicated by the record which would prevent him from accomplishing those assignments. Based on the entire record, therefore, there is no reason to interfere with Carrier's decision to terminate Claimant. The claim must be denied.

AWARD

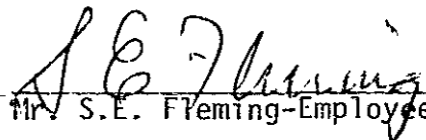
Claim denied.



I.M. Lieberman, Neutral-Chairman



Mr. L.C. Scherling-Carrier Member



Mr. S.E. Fleming-Employee Member

August 31, 1979
San Francisco, California