

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company
(Western Lines)

Dispute: Claim of Employees:

That under the current Agreement, Mechanical Department Electrician D. L. Metz was unjustly treated when he was dismissed from the service on March 19, 1985 following investigation for alleged violation of portions of Rules 801 and 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to grant Electrician D. L. Metz leave of absence during his period of incarceration in California State Prison and rescind his dismissal from service.

That the Southern Pacific Transportation Company (Western Lines) be ordered to restore Electrician D. L. Metz to service, upon completion of sentence in California State Prison, with all rights unimpaired, including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions; and the 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 employe or employes involved in this dispute are respectively carrier and employes 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.

The record shows that Claimant was employed as an Electrician at Carrier's Los Angeles, California, Locomotive Repair Plant. He had been on medical leave of absence since September, 1982.

On September 26, 1984, Claimant was sentenced to imprisonment in the California State Prison system for a term of three years as a result of having been arrested on a felony sexual misconduct charge. The Court declined to grant Claimant probation.

Following a formal Hearing conducted on February 5, 1985, Claimant was dismissed from Carrier's service on March 19, 1985.

Claimant was not present at the formal Hearing conducted on February 5, 1985, due to being incarcerated; however, he was represented. In the course of the Hearing certified copies of the Court Conviction Order of Claimant and the Order of Commitment to the State Prison were introduced. Also, during the course of the Hearing, a letter dated January 25, 1985, from Claimant to the Local Chairman of the Organization was introduced, in which Claimant asked that a leave of absence be requested for him for the duration of his incarceration. The request was entered into the Hearing by the Local Chairman. Claimant was dismissed from Carrier's service on March 19, 1985. The request for leave of absence was denied.

Rules 801 and 810 of Carrier's General Rules and Regulations read in part:

Rule 801: "Employees will not be retained in the service who are immoral...."

Rule 810: "Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

The Board has held on numerous occasions that incarceration is not a valid excuse for failing to protect an assignment. Neither do we consider it a valid reason for a leave of absence.

Claimant was clearly in violation of Carrier's Rules Nos. 801 and 810. His dismissal from service was justified. See Award No. 10615 of this Division and Awards Nos. 24994 and 25803 of the Third Division. The Claim will be denied.

We have disposed of the dispute on its merits, without passing upon the procedural issues raised by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.