

**Award No. 5016
Docket No. 4845
2-SP(PL)-MA-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

That under the current agreement Machinist Thurman C. Elmore (hereinafter referred to as claimant) was unjustly dismissed from the service on June 25, 1964, and that accordingly the Carrier be ordered to:

- 1 - Restore claimant to service with seniority rights unimpaired.
- 2 - Compensate the claimant for all time lost.
- 3 - Make claimant whole for all vacation rights.
- 4 - Pay the premiums (or Hospital Association dues) for Hospital, Surgical and Medical benefits for all time held out of service.
- 5 - Pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed claimant as machinist on March 14, 1955 at its Sacramento General Shops, Sacramento, California, and his hours of assignment on June 25, 1964 were from 7:00 A. M. to 3:30 P. M.

On May 28, 1964, the carrier charged claimant with violation of its exparte Rules M, 801 and 802 of its socalled general rules and regulations, also exparte Rule 4040 of its safety rules governing employes in the mechanical department.

Formal hearing scheduled to be held on June 2, 1964 was held on June 2, 3, and 5, 1964 as indicated by hearing record.

Following his dismissal, claimant was allowed all vacation pay to which he was entitled in accordance with the controlling Vacation Agreement. Carrier is not aware of any other vacation rights which would flow to the claimant under the vacation agreement and, in fact, asserts there are none. Petitioner's requests that the company pay premiums for hospital, surgical and medical benefits and pay the premiums for life insurance are not supported by any rule, custom or practice in effect on carrier's property and, carrier asserts, are not properly referable to your honorable board.

CONCLUSION: The carrier here asserts that the claim in this docket is entirely without basis or merit, and therefore respectfully requests that it be denied.

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 employe 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 claim is that after an investigation Claimant was unjustly dismissed from the service. The hearing concerned an incident in which the Claimant apparently strained his back and another employe experienced a barked shin. The notice of hearing given both was in part as follows:

"You are hereby notified to be present * * * for formal hearing for allegedly entering into an altercation and/or horseplay * * * resulting in personal injuries to each of you, and misrepresenting the facts concerning the occurrence, for which you are hereby charged with responsibility which may involve a violation of the General Rules and Regulations of the Southern Pacific Company as follows:

'Rule M. Employes must exercise care to avoid injury to themselves or others.

Carelessness by employes of the safety of themselves or others will not be condoned.

* * * * *

and of the Safety Rules governing employes of the Mechanical Department effective January 1, 1962, Rule 4040 reading:

'Horseplay, sparring or any form of practical joking is forbidden.'

Two other rules were mentioned which need not be considered, since the above were the only ones mentioned in the notice of Claimant's discharge.

The investigation record shows that during working hours in the shop Claimant announced his intention of putting a fellow employe three-fourths his size into a refuse can; that his victim attempted what is termed evasive

action, but that Claimant pursued him, seized him from behind, lifted him from the floor, and attempted three times to put him into the container, which each time was overturned but was immediately righted by another employe, who nevertheless professed to know nothing about the incident.

There is no suggestion that Claimant was irrational, irresponsible or quarrelsome, or that he had received any prior discipline during his fourteen years in the Carrier's service.

When asked to report the incident, both the Claimant and the victim of his horseplay at first concealed the facts; consistent with tradition the witnesses to the occurrence were quite reticent, the Carrier's attempt to obtain evidence in preparation for the hearing was made as difficult as possible, and before this Board the Carrier is accused of excessive and improper zeal; but the witnesses conceded that no threats, intimidation or improper means was used, and the record discloses none.

In view of Claimant's frank admission of guilt it is pointless to contend that the charge was not proved; but in view of the relative triviality of the offense, and his fourteen years of service, apparently without prior discipline, his discharge appears to constitute excessive discipline.

AWARD

Claimant is ordered restored to the service, with seniority rights unimpaired, and with vacation rights accrued pursuant to that seniority, but without pay for time lost, or other relief claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1967.