



Award No. 5056
Docket No. 4884
2-AT&SF-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That Electrician C. M. Alexander was unjustly deprived of his service and seniority rights when he was discharged from his position as an electrician, Barstow, December 26, 1963.

2. That the Atchison, Topeka and Santa Fe Railway Company be ordered to:

(a) Restore Electrician C. M. Alexander to service with seniority rights unimpaired and compensation at his applicable rate for all time lost as a result of his dismissal.

(b) Restore all vacation and pass rights.

(c) Restore Hospitalization benefits and pay all dues and premiums from December 26, 1963.

(d) The Carrier will be held financially responsible for all financial loss incurred by Mr. Alexander in the event that (a), (b), and (c) above, are not complied with by the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 26, 1963, C. M. Alexander, hereinafter referred to as the claimant, was regularly employed as an electrician by The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, on their Coast Lines, and in their mechanical department, Barstow, California facilities. The claimant was an hourly rated employee regularly employed Friday through Tuesday; Wednesday and Thursday, rest days, hours of assignment 3:00 P.M. to 11:00 P.M.

phatically asserts that the claim does not merit such a decision, nor does the employee even merit reinstatement, any allowance for wage loss should be less amounts earned in other employment, pursuant to the provisions of Rule 33½, paragraph (d), of the current shop crafts agreement, reading:

"If the final decision shall be that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal." (Emphasis ours.)

Attention in this connection is also directed to Second Division Awards 1638, 2653, and 2811, Third Division Awards 6074 and 6362, and Fourth Division Award 637.

Particular attention is further directed to Items 2(b), 2(c) and 2(d) of the employees' claim, reading:

"2. (b) Restore all vacation and pass rights.

(c) Restore Hospitalization benefits and pay all dues and premiums from December 26, 1963.

(d) The Carrier will be held financially responsible for all financial loss incurred by Mr. Alexander in the event that (a), (b) and (c) above, are not complied with by the Carrier."

It will be observed that Rule 33½, paragraph (d), which is quoted in the preceding paragraph, provides that if the final decision shall be that an employee has been unjustly suspended or dismissed from the carrier's service, "such employee shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal." (Emphasis ours.) Neither that rule nor any other rule of the shop crafts agreement contemplates or provides for restoration of vacation and hospital benefits, payment of all dues and premiums, or financial responsibility for any loss sustained by the claimant, as requested in the items of the employees' claim quoted above. See in this connection Second Division Award No. 3883.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant, C. M. Alexander, was a Diesel Electrician in Barstow Roundhouse from 3:00 P.M. to 11:00 P.M. The engine that came in, Unit 2694, had smoking traction motors.

On November 16, 1963 at about 7:30 P.M., the Claimant was instructed to inspect the traction motors. He was again instructed to inspect them at about 9:15 P.M. The Claimant was scheduled to go off duty at 11:00 P.M. However a few minutes after 10:00 P.M., the Electrical Foreman met the Claimant, who informed him that he was sick and was going home. The Claimant checked out at 10:19 P.M. after he refused to inspect the motors. He stated that he refused for safety reasons.

The employes have the burden to prove the case presented by them to the Board. The employes in this case did not prove their case.

The facts in this record show that all necessary safety precautions were made available to Claimant without avail and the record likewise leaves us unconvinced that the Claimant was sick as he contended.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1967