

Award No. 2730
Docket No. 2742
2-SP(PL)-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under provisions of the current Agreement Passenger Car Welder Wayne E. Wise was unjustly suspended on December 27, 1956, and dismissed from the service of the Carrier on January 15, 1957; and

2. That accordingly, Carrier be ordered to reinstate him with all rights of employment and compensation for all time lost retroactive to December 27, 1956.

EMPLOYEES' STATEMENT OF FACTS: The Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, employed Passenger Car Welder Wayne E. Wise, hereinafter called the claimant, on the day shift, Sacramento General Shops, Sacramento, California, and claimant had been in the service of the carrier for the past twenty years and maintained his position satisfactorily and accordingly since his date of employment, 12-21-36.

The carrier's representative G. M. Cagley, superintendent of shops, summoned claimant to appear for formal hearing at 9:00 A.M., January 1, 1957, on alleged charges of being quarrelsome, or otherwise, and entering into an altercation, and which summon is affirmed by copy of letter dated December 28, 1956, submitted herewith and identified as Exhibit A. Hearing was held as scheduled, and confirmed by Exhibit B, page 1, denoting contents thereof, submitted herewith.

Carrier's shop superintendent, also at that time, made the election to summon as his witnesses at this January 7, 1957 hearing: Messrs. Orval Martine, foreman, Passenger Car Department; F. D. Martin, foreman, Freight Car Department; L. P. Martin, foreman, Freight Car Department; W. N. Miller, freight car welder, Freight Car Department; Fred Herrmann, freight car welder, Freight Car Department; Wayne Menard, freight carman, Freight Car Department, and which aforementioned appellations are contained in Exhibit B, page 1.

In First Division Award 15765, with Referee Edward F. Carter, statement is made under "Findings" in part as follows:

"Claimant is therefore entitled to recover the amount he would have received as wages had the contract been performed from July 12, 1950 to December 19, 1950, less what he earned in other employment during that period, or what he might by reasonable diligence have earned in other employment during such period."

This position is also sustained by First Division Award 15258, with Referee Curtis W. Roll, rendered on January 26, 1954, wherein it was ruled that outside earnings would be deducted when payment is made for wage loss. In this connection also see First Division Award 16558.

The carrier therefore asserts that in the event the Board considers the matter of compensation to the claimant for time lost, it is incumbent upon the Board to follow the logical and established principle set forth above and require that any and all earnings by the claimant during the period for which compensation is claimed be denied.

CONCLUSION

Having conclusively established that the claim in this docket is without merit, carrier respectfully submits 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.

The parties to said dispute were given due notice of hearing thereon.

Considering all the facts of record in this case the Division, without prejudice, is of the opinion that the discipline administered has served its purpose and the claimant should be reinstated with seniority rights unimpaired but without pay for time or wage loss.

AWARD

Claim to be disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.