

Award No. 3308

Docket No. 3093

2-RDG-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreement Car Inspector Charles J. Schneider was improperly denied payment in lieu of vacation for the year 1956, which was earned in the year 1955.

2. That accordingly the Carrier be ordered to pay the aforesaid Car Inspector Charles J. Schneider in lieu of vacation for 1956.

EMPLOYES' STATEMENT OF FACTS: Car Inspector Charles J. Schneider (hereinafter referred to as the claimant) was employed by the carrier as a packer January 13, 1949, changed to car inspector September 7, 1949, Port Richmond Yard, Philadelphia, Pennsylvania, at which position he remained until his present assignment as car inspector, Erie Avenue, Philadelphia, Pennsylvania, to which he was assigned February 1, 1957. During the year 1955 the claimant performed compensated service on not less than 133 days, qualifying him for a vacation with pay or payment in lieu thereof for the year 1956.

The claimant was dismissed from the service by the carrier on September 16, 1955. The dismissal was not accepted by the claimant, and his case was referred to the National Railroad Adjustment Board. Second Division, by the organization on behalf of the claimant. Award No. 2365 was rendered on December 13, 1956, by the Second Division, ordering the carrier to restore the claimant to service with seniority rights unimpaired.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

He was reinstated by the management solely as a result of the award and order of the second Division, National Railroad Adjustment Board, in Award No. 2365. He certainly was not "given" a suspension by the carrier and Award No. 2365 merely reinstated claimant with seniority unimpaired.

In view of the foregoing, carrier maintains that the vacation agreement does not support the present claim and, in fact, Article 8 of the agreement requires a denial award in this claim.

Under all the facts and evidence presented hereinbefore, carrier maintains that the claim here before the Board was previously disposed of by the Board in its Award No. 2365, which award, in accordance with Section 3, First (m) of the Railway Labor Act, was final and binding on both the carrier and the carmen of System Federation No. 109. Therefore, carrier submits that the Board cannot lawfully assume jurisdiction of the instant claim and should properly dismiss same. Subject to the foregoing, it is the carrier's position that the claim as submitted has no merit or equity under the applicable rules of vacation agreement in effect between the parties and should be denied in its entirety.

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 were given due notice of hearing thereon.

Claimant was dismissed from carrier's service effective September 16, 1955, after having performed compensated service of not less than 133 days in that calendar year. The resulting dispute was progressed to this Board and decided by Award 2365 (Carter). In that decision we concluded that claimant was subject to discipline, but that "a suspension would have served the purpose of discipline in the present case." It was therefore directed "that claimant be reinstated with his seniority unimpaired without compensation for time lost."

Pursuant to the Order accompanying Award 2365, claimant was returned to service on February 1, 1957. In the present case the organization contends that claimant was entitled to payment in lieu of vacation for the year 1956 on the basis of his compensated service rendered in 1955. Carrier responds that the requested payment is not due the aggrieved under the applicable agreement provisions.

In award 1973 (Donaldson) we decided the identical question which arose under a set of facts conforming with those here presented in all pertinent respects. That award is controlling. Award 2926, which has been cited in the carrier's behalf, is not in point. The latter dispute was decided on the question of timeliness, an issue that does not appear in the subject docket.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1959.