

**Award No. 4801
Docket No. 4737
2-SP(PL)-FO-'65**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Firemen & Oilers)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Laborer Jose P. Aguilera was unjustly treated when he was not allowed to return to service August 1, 1963, after 15 years with the Carrier.

2. That accordingly the Carrier be ordered to:

(a) Restore the aforementioned laborer to service with seniority rights unimpaired,

(b) Compensate him for all time lost retroactive to August 1, 1963,

(c) Restore him to service with vacation rights, insurance rights and all other rights for all time held from service.

EMPLOYEES' STATEMENT OF FACTS: Laborer Jose P. Aguilera, hereinafter referred to as the claimant, was employed by the carrier and at the time he was denied his right to return to his regular position as a laborer he had about 15 years of service. The claimant was injured April 3, 1961. After several attempts by the undersigned and the claimant's attorney, Mr. Richard E. Crow, to have him returned to his regular position, under date of November 13, 1963, Local Chairman Walter W. John presented proper claim in accordance with the current agreement to Master Mechanic R. L. Smith, requesting him to return the claimant to his regular position as laborer and that he be compensated for lost time account of being held out of the Southern Pacific Company's service, hereinafter referred to as the carrier.

The claimant was treated by Dr. Jones, company doctor at Roseville, California from the period April 3, 1961 to April 14, 1961, when he was

the only agreement provision covering payment for wage loss is found in Rule 33 (a) of the current agreement covering discipline, suspension and dismissal, which reads in part:

“. . . If it is found that the employe is innocent of the charges preferred, he shall be reinstated to service with seniority unimpaired and **paid for net wage loss, if any**, resulting from such suspension and/or dismissal.” (Emphasis added)

The above rule has been interpreted as requiring deduction of earnings in any employment during period of a claim.

CONCLUSION

All data herein submitted have been presented to the duly authorized representatives of the petitioner and are made a part of the particular question in dispute.

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 Carrier asserts that the chief surgeon declined to certify the claimant as physically fit for laboring duties, but it has not produced any medical report to that effect. On the contrary, there is in evidence a letter report from a doctor on the hospital staff dated July 8, 1963, which reported claimant to be in good physical condition but “for administrative reasons no return to duty was given”. On this record the withholding from service was not justified.

The claim was filed on November 13, 1963 so the claim for pay for more than 60 days prior thereto is not valid. Claimant was restored to service on August 1, 1964, so this is now only a claim for compensation for the intervening time. There is no showing of any dispute over vacation or insurance rights, so the award will be merely for wage loss during this period less earnings in other employment during the same period of time.

AWARD

Claim sustained to the extent stated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1965.

Keenan Printing Co., Chicago, Ill.

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