



Award No. 4909
Docket No. 4840
2-AT&SF-CM-'66

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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
WESTERN LINES

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman R. E. Atencio was unjustly dismissed from the service of the Carrier on December 4, 1963 at 3 p.m., at Albuquerque, New Mexico.

2. That accordingly the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital, dependents' and group life insurance premiums unimpaired, and also that he be additionally compensated at his applicable hourly rate of pay for all time lost retroactive to 3 p.m., December 4, 1963, and to continue on the same basis until he is returned to service.

EMPLOYEES' STATEMENT OF FACTS: R. E. Atencio, hereinafter referred to as the claimant, was employed by the Panhandle and Santa Fe Railway Company, hereinafter referred to as the carrier, as a carman at Albuquerque, New Mexico, working hours of 7:30 a.m. to 12 noon, and 12:30 p.m. to 4:30 p.m., work week of Monday through Friday, rest days of Saturday and Sunday.

On November 19, 1963 the claimant was given notice to appear for investigation at 9 a.m., Friday, November 22, 1963, alleging that he had been absent from duty without proper authority from November 4, 1963 through November 18, 1963, in violation of Rule 19 of Form 2626 Standard, rules for the guidance of employees, 1959 issue.

The investigation was held and on December 4, 1963 at 3 p.m., the claimant was dismissed from service, which was prior to the claimant's regular quitting time.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, who all have declined to make satisfactory settlement.

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

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

In conclusion, the carrier states that the testimony adduced at the formal investigation on November 22, 1963, including the claimant's own testimony, clearly established beyond any reasonable doubt that Claimant Atencio deliberately refused, after he had been notified twice that he was not authorized to be absent on vacation, to either return to work or obtain permission to be absent from his position. According to claimant's own testimony, he knew that he had already had his 1963 vacation and that he did not have authority for his absence from November 4 to 18, 1963. His reason for not returning to work, as it was expressed to Labor Foreman Barker, being that “the company made the mistake and would have to pay him.” Such flagrant disregard and open contempt for and refusal to observe the company's rules fully justified Claimant Atencio's removal from service. Under such circumstances, the discipline assessed was neither arbitrary, capricious nor an abuse of discretion. The board is respectfully urged, therefore, to deny or dismiss the employee's claim 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.

At the formal investigation Claimant admitted his absence from duty without authority from November 4 through November 18, 1963, but under the circumstances his suspension from December 4, 1963, to the effective date of this award, appears to be a more appropriate remedy than his absolute discharge.

The Claimant had his regular vacation from February 18 through March 1 of that year. The record contains references to a supplemental vacation schedule but does not show that Claimant's name appeared on it. This incident arose from the timekeeper's error in stamping “Vacation” on Claimant's time clock card. Claimant discovered the notation on November 1st, the day of his last shift, and finding it again when he reported for duty on November 4th, he left without conferring with his foreman, the timekeeper or any other official of the Carrier, or even with his local chairman or vice-chairman, although he did inquire of the latter where the chairman was.

Although contacted by a labor foreman, first on March 6th at the request of the timekeeper, whose error caused Claimant's confusion, and again on March 11th at the request of his foreman, Claimant remained on what he

considered his vacation, allegedly because of illnesses of himself and family. But he did not attempt to claim pay for the period.

Claimant should have applied for a leave of absence under Rule 19, but apparently considered the notation on his time card as obviating the need for such application. Under the circumstances and in the absence of any indication of prior violations, we conclude that Claimant should be reinstated in service with seniority and vacation rights unimpaired, but without pay for time lost or items claimed.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1966.