



Award No. 4959
Docket No. 4846
2-SP(PL)-EW-'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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Lineman Porter R. Campbell was unjustly treated when he was suspended from service on February 5, 1964, and dismissed on February 18, 1964, for alleged violations of carrier's Rule 1030 of Rules and Regulations for the Maintenance of Way and Structures.

2. Accordingly, (a) claimant be restored to service with all service and seniority rights unimpaired with pay for time lost; (b) be granted all vacation rights; (c) Carrier pay Southern Pacific Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums under the Travelers Insurance Company Group Policy for all time claimant is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 5, 1964 Porter R. Campbell, seniority date of December 3, 1962, was assigned as the district lineman under supervision of the district communications supervisor working at Tucson, Arizona.

On February 4, 1964 at approximately 10:00 A.M., claimant was instructed by District Communications Supervisor L. L. Rittenhouse to board train No. 40 due to leave Tucson, Arizona at 2:40 P.M., and proceed to Carrizozo, New Mexico and upon arrival to report to District Lineman P. Irvine, headquarters Carrizozo, New Mexico.

Claimant boarded train No. 40 as per instructions and after train was enroute noted there were no eating or sleeping facilities aboard. Claimant had never before ridden this train nor had he been advised by the district communications supervisor that these facilities were unavailable, therefore, had made no preparations with regard to food and rest.

his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The board has previously interpreted this rule providing for compensation for "wage loss, if any" as requiring deduction of outside earnings in computing compensation due. See Second Division Awards 2523 and 2653.

With respect to remainder of claim, requesting:

" . . . all vacation rights, paid premiums for hospital, surgical and medical benefits for all time held out of service, paid premiums for Group Life Insurance for all time held out of service . . . "

Following his dismissal, claimant was allowed all vacation pay to which he was entitled in accordance with the controlling Vacation Agreement. Carrier is not aware of any other vacation rights which would flow to the claimant under the Vacation Agreement and, in fact, asserts there are none. Petitioner's requests that the company pay premiums for hospital, surgical and medical benefits and pay the premiums for life insurance are not supported by any rule, custom or practice in effect on carrier's property and, carrier asserts, are not properly referable to your Honorable Board.

CONCLUSION

The carrier respectfully submits that having conclusively established that the claim is entirely without merit, it should 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.

Claimant was suspended from duty as authorized by Rule 27 and was informed of a formal investigation on the following charge:

" * * * violation of that part of Rule 130 of Rules and Regulations for the Maintenance of Way and Structures reading as follows:

'Employes. . . . They must not absent themselves from their employment without proper authority.'

Specifically, you will be charged with failure to report for duty following the arrival of train No. 40 at Carrizozo, New Mexico, Wednesday, February 5, 1964."

Claimant was a lineman on the Tucson Division, paid on a monthly basis, with 10:00 A.M. as his regular starting time. At about 10:30 on the morning of February 4, 1964, the district communications supervisor, because of

line damage expected to result from blizzard conditions between Tucumcari and Carrizozo, ordered Claimant to leave for the latter point, about 450 miles away, by train No. 40, departing at about 2:40 P.M. and reaching Carrizozo at about 1:05 next morning.

The supervisor testified that he instructed Claimant to ride train No. 40 to Carrizozo and be ready for duty on arrival of the train there. He admitted that he did not specifically instruct Claimant to stay on the train until it arrived there; but the Claimant does not suggest how otherwise he could then have been ready for duty there.

Claimant admits that he was told to report to Paul Irvine at Carrizozo, but denies that he was instructed to stay on train No. 40 to that destination, or to report immediately upon its arrival there. But he knew that he was being sent for expected emergency service, and that train No. 4, which he would have preferred to ride because of its Pullman cars, would not arrive until 10½ hours later. Since the supervisor did not elect to send Claimant on the later train it seems apparent that he wanted to save the extra delay. He testified that he himself rode train 40 when advisable.

Claimant testified that he was perturbed at the idea that he might be the only one going on this duty, but that upon inquiry of the supervisor

"He then informed me that Mr. Spellman was going with me; he was to continue on to Tucumcari." (Emphasis ours.)

The matter emphasized at least suggests that both would be expected to be on the train when it reached Carrizozo, and that Spellman would stay on.

Claimant did not state that he was ignorant of train No. 40's limitations; he had been working there for over a year, and knew that it carried no Pullmans, but said he was afraid to mention that fact to the supervisor; he had four hours before the train was to leave, but apparently made no preparation to take food with him, which the travelling public must do unless willing to wait until the 9:30 meal stop at El Paso.

Claimant testified that he left the train at Lordsburg because he was hungry; but he added that he intended to catch train No. 4; and Spellman stated that before getting off the train there they had discussed that plan. Claimant testified further:

"After leaving the train at Lordsburg and having supper I discussed the situation with Mr. Spellman and we decided to forego our entire night's rest and go to Deming at which time we had arranged to borrow Mr. Crow's extra car and proceed as instructed."

They had arranged with the lineman at Lordsburg to take them to Deming in a company truck for that purpose. When their absence from train No. 40 was discovered at El Paso the supervisor succeeded in locating them at Deming and told them to return to Tucson.

Claimant was asked:

"* * * in view of the fact that you got off of No. 40 intending to catch No. 4 so you could sleep, why did you decide to forego your entire night's rest and drive a car all night to Carrizozo?"

He replied:

"Whether the Company knows it or not, they have some pretty loyal employes and we decided to do this for the good of the Company * * *."

This indicates an awareness, upon further consideration, that the supervisor had some reason for sending them on train No. 40 instead of nearly a half day later, that their services might be needed as soon as possible and that they should have stayed on the train for that purpose.

In view of the supervisor's direct testimony that he instructed Claimant to be ready for duty upon the arrival of train No. 40 at Carrizozo this Board cannot hold that there is a lack of evidence to sustain the charge. It is well settled that this Board is not a weigher of the evidence, and despite the Claimant's denials, his testimony shows a realization of his responsibility for the promptest possible availability for service at Carrizozo under the expected emergency conditions.

By leaving the train at Lordsburg the Claimant made it impossible for him to be available for service upon the arrival of train No. 40 at Carrizozo. His absence from the train was discovered when it reached El Paso; when he was located at Deming he was directed to return to Tucson and the charge followed.

A number of contentions are raised by the Organization, none of which can be sustained, including the reference to Rule 17 which relates to construction gangs and is inapplicable. But under the circumstances it is apparent that when the Claimant realized his error he did his best to retrieve it. We conclude, therefore, that Claimant's suspension and investigation under Rule 27 were justified and that some discipline was warranted, but that under the circumstances his discharge constituted excessive discipline, and that he should be restored to service with seniority unimpaired but without pay for time lost or the other benefits claimed. The record indicates that following his dismissal Claimant was paid \$134.04 as pay for his earned vacation, which is not denied or claimed to be inadequate.

AWARD

Claim sustained to the extent stated in the Findings, and Claimant ordered restored to service with seniority unimpaired, but without pay for time lost or the other benefits claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

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

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