



Award No. 5835
Docket No. 5694
2-AT&SF-MA- '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Machinists)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY — COAST LINES —**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current controlling agreement Machinist P. S. Neri of Barstow, California, was unjustly dismissed from the service of the AT&SF Railway Company by written notice dated February 27, 1968.
2. That accordingly the carrier be ordered to reinstate this employe to service with all service rights, seniority, all net wage loss, and payment in lieu of all other accrued contractual benefits to which otherwise entitled had he continued to remain in carrier service dating from February 27, 1968.

EMPLOYEES STATEMENT OF FACTS: There is an agreement in effect between the AT&SF Railway Co., hereinafter referred to as carrier, and System Federation No. 97, Railway Employees' Department, AFL-CIO, representing among others the International Association of Machinists and Aerospace Workers, parties to this dispute, identified as "Shop Crafts Agreement", effective August 1, 1945, as amended (reprinted January 1, 1957, to include revisions), a copy of which is on file with the Second Division, National Railroad Adjustment Board and is hereby referred to and made a part of this dispute.

Mr. P. S. Neri, hereinafter referred to as claimant, was charged in formal investigation held at Barstow, California on January 31, 1968 (Employees' Exhibit A, pages 1 through 24), with being absent from duty December 13, 1967 to January 18, 1968, without proper authorization and was dismissed from service effective February 27, 1968.

Claim on behalf of claimant for restoration to service in manner set forth in dispute — claim of employes was initiated on March 1, 1968, by Machinists Local Chairman D. L. Maurer. Following correspondence was exchanged with the carrier in progression of this dispute — claim.

That part of Item 2 of statement of claim, reading: "— payment in lieu of all other accrued contractual benefits to which otherwise entitled —" is non-specific and carrier has no knowledge of the "benefits" to which petitioner refers and it is submitted that this portion of the statement of claim should be given no consideration under any circumstances.

Referee Howard Johnson when denying the employes' claim covered by Second Division Award No. 5049 stated:

"If the claim as made and processed on the property had been that Rule 19 had been violated, it would have been difficult, if not impossible, to determine what Claimant's wage loss would have been. In the case of an employee able and willing to work the regular hours permitted and expected of him under the Agreement, his wage loss would be 40 hours' pay per week; but in view of Claimant's work record, his loss would have been indeterminate."

CONCLUSION: In conclusion, respondent submits that it has produced more than substantial evidence to prove that:

- (1) Claimant Neri was guilty of willfully absenting himself from duty without proper authority in violation of Rule 16 of the General Rules for the Guidance of Employes,
- (2) That this violation, standing alone, constituted sufficient grounds for claimant's dismissal from service,
- (3) That this instance, coupled with four previous identical cases, demonstrates that claimant is not a desirable employe, and
- (4) That he should not be returned to service under any circumstances.

The carrier is uninformed as to the arguments the brotherhood may advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the brotherhood in this dispute.

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 in this case was charged with being absent without leave from December 13, 1967 to January 8, 1968, a total of 27 days inclusive.

He was accorded a fair and impartial hearing, was found guilty and ordered dismissed from the service. The evidence of record is substantial justifying the finding of guilty. There were to be sure, mitigating circumstances in this case which involved the illness of the Claimant as well as his wife. We wish to direct attention to his previous record of absences over several years and Carrier's lenient attitude in each of these cases. In deference

to the foregoing, we cannot in good conscience sustain the claim as submitted, that is to say, we cannot recommend that carrier be ordered "to reinstate this employe to service with all service rights, seniority, net wage loss and payment in lieu of all other accrued contractual benefits to which otherwise entitled had he continued to remain in carrier service dating from February 27, 1968."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.