



Award No. 5926

Docket No. 5771

2-SP(T&L)-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 162,
RAILWAY EMPLOYEES' DEPARTMENT AFL-CIO
(CARMEN)**

**SOUTHERN PACIFIC COMPANY—TEXAS
AND LOUISIANA LINES**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Carman Harley Joseph Madison was unjustly dealt with when he was removed from service through capricious and discriminatory actions by the Carrier on November 2, 1968.
2. That accordingly, the Carrier be ordered to reinstate Carman Harley Joseph Madison with all rights unimpaired and that he be compensated for all time lost and made whole for all other rights provided for in the Collective Bargaining Agreement.

EMPLOYEES' STATEMENT OF FACTS: Carman Harley Joseph Madison, hereinafter referred to as the claimant was employed as a carman with the Southern Pacific Company, Texas and Louisiana Lines at Del Rio, Texas, car department, on September 1, 1967, when he reinjured his back by carrying heavy weighty draft gear coupler knuckle while he was on duty, September 1, 1967, in the train yard at Del Rio, Texas, Southern Pacific Company, Texas and Louisiana Lines, hereinafter referred to as the carrier. The claimant made a report of his back injury to Foreman Tronson, and Foreman Tronson gave the claimant a permit to the carrier's doctor at Del Rio, Texas, and when the claimant got to see the carrier's doctor at Del Rio, Texas, on September 8, 1967, that doctor ordered the claimant to go to the carrier's hospital at Houston, Texas. The claimant complied with the Del Rio carrier's doctor's instructions and checked in the carrier's hospital at Houston, Texas, on September 9th, 1967. After the carrier's doctors in the hospital checked and examined the claimant's back; they found that in order to correct his injured back an operation would have to be performed on his back; which that was done. Then the carrier's doctors ok'd the claimant to go back to work on his assignment as carman. The claimant returned to work on June 1, 1968, which was eight (8) months and twenty-three (23) days that the claimant was off from work from September 8th, 1967, through June 1st, 1968. Then on Sep-

erroneously concludes that Mr. Madison was improperly discharged, we respectfully request the Board to apply the existing agreement on time lost by crediting money earned in outside employment toward any compensation claimant may receive because of time allegedly lost.

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 charged with failure to report to his foreman an alleged personal injury at once as is required by the rules, and for falsely reporting to the Carrier Claim Agent that he sustained a personal injury to his back which allegedly occurred while lifting a "knuckle."

Claimant contends that his back hurt him as he and another employe were lifting a "knuckle." This occurred on September 1, 1967. He did not work the following two rest days or on Labor Day. He returned to work on Tuesday, September 5, 1967 at 10:30 P.M. and worked overtime completing his tour at 10:15 A.M. on Wednesday, September 6, 1967. He performed duty the following day, and after it was completed Claimant requested and received from his foreman an Order for Treatment slip in order to visit the Hospital Association Doctor at Del Rio, Texas.

Claimant was subsequently hospitalized at the Southern Pacific Employees Hospital at Houston, Texas, and in October, 1967 received surgery for a back ailment. He was treated by a Doctor Hi Newby in Del Rio and a Dr. P. Valdez at the hospital in Houston.

The foreman testified that he knew Claimant had a bad back as the result of a prior injury but had no recollection of Claimant's telling him that he injured his back on September 1, 1967. The foreman stated that Claimant only told him that he was "sick" and wanted to go to Del Rio. It should be noted that the Order for Treatment Slip only lists as a Cause of Disability two categories: "Illness" and "Injured off duty." There is no category for "Injured on duty."

The Board finds that the foreman received adequate notice of an impediment, even though it was not specifically described. Under the circumstances it cannot be said that Claimant failed to notify the foreman so as to constitute a ground for dismissal.

The fact that Claimant failed to report the accident until almost nine months after treatment cannot be considered, as Carrier contends, a violation of Rule 42 because Claimant was not so charged.

With respect to the matter of falsely reporting the injury to his back, the Board finds that on the basis of the record it is impossible to make such determination. The best, and, under the circumstances, the only way to prove or disprove this is to examine hospital records, and doctors' report or statements.

A W A R D

The parties are directed to jointly develop the hospital records, Doctors' reports or statements and submit same to this Board within thirty (30) days from the date of this Award in accordance with the above Findings. Pending receipt of such data, the proceedings before this Board will be continued.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1970.