

Award No. 6013
Docket No. 5875
2-SP(PL)-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)

SOUTHERN PACIFIC TRANSPORTATION COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Mechanical Department Electrician Billy Murray Williams was unjustly treated when he was dismissed from service on September 26, 1968, for alleged violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Company (Pacific Lines).

2. That accordingly, the Carrier be ordered to:

- (a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired and compensate him for all time lost.
- (b) Reinstate all vacation rights for the aforesaid employe.
- (c) Pay Southern Pacific Employees Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employe is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Mechanical Department Electrician Billy Murray Williams, hereinafter referred to as the claimant, was regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, and regularly assigned, prior to August 16, 1968, as an electrician under the supervision of E. I. Norman, Superintendent of Shops, Sacramento Division, with headquarters at Sacramento, California. Under date of August 21, 1968, claimant was apprized by letter that he was being charged with violation of portions of Rules 801, 810 of carrier's General Rules and Regulations, reading:

RULE 801.

"Employes, who are . . . dishonest . . . will not be retained in the service."

ANALYSIS OF CLAIM

The carrier, having conclusively proved that the claim in this docket is in its entirety, without merit, is confident the board will deny it. Notwithstanding this position and in no way admitting that the carrier's dismissal of the claimant was not justified and proper, the board's attention is directed to Rule 39 of the current agreement, that part reading:

" . . . If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The board has previously interpreted the 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 which cover the practice on this property.

Additionally, as heretofore shown in carrier's submission, the claimant has pending in the Superior Court of the State of California for the City and County of San Francisco a lawsuit to recover damages for alleged injuries or or about August 16, 1968, including the reasonable value of his loss of services account unable to perform his regular duties, or any work at all, and inability to work for an indefinite time in the future. The claim in this docket is incongruous with the claimant's assertions before the Court of his inability to work. He asserts fitness on the one hand and disabilities on the other which, if successful, would result in double recovery which is unconscionable.

With regard to claim 2(b); i.e., reinstate all vacation rights for the aforesaid employe, the current vacation agreement between the parties controls and petitioner has presented no facts or contentions that there is any dispute in this regard.

With respect to claim 2(c); i.e., pay Southern Pacific Employees Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employe is held out of service, such matters are also the subject of agreements between the parties with no evidence of any dispute as to interpretation or administration. Therefore, unless the petitioner can show a contract provision supporting the above-noted claim, it is not properly before the Board and should be dismissed.

CONCLUSION

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.

Claimant entered Carrier's service on June 12, 1956, at Oakland, California, on Carrier's Western Division as an Electrician Helper. He was subsequently promoted to Electrician Helper Apprentice. On May 31, he reported a back injury to his foreman that occurred sometime during the month of April, 1960. He returned to work on July 1, 1960, and on July 19, 1960, a lawsuit to recover damages because of said back injury was filed. This case was later settled for the sum of \$5,000.00. After completing his apprenticeship in August, 1966, Claimant was released without establishing his seniority as an electrician. On December 2, 1960, this Claimant made application at Carrier's Sacramento General Shops and represented himself as a furloughed Electrician from the Western Division. He was accepted for employment and worked there (Sacramento) as an Electrician until April 22, 1968, when he resigned from Carrier's service. On July 16, 1968, the Claimant made application for employment as an Electrician at Carrier's Sacramento General Shops. He completed the required form and went to work on July 17, 1968. In this form, he answered the questions presented as to whether or not he had been injured, whether or not a claim had been presented for the injury, and whether or not he had ever employed or been represented by an attorney in connection with any claim or suit for damages, in the negative. This precipitated a formal hearing wherein Claimant was charged with falsification of his personnel record. After a hearing, he was found guilty of violation of Rule 801 of the General Rules and Regulations and was dismissed from service by letter of September 26, 1968.

The Organization contends that this Claimant could neither read nor write. However, the record also shows that he made out his own time card. The burden was on the Organization to show that there was no rule violation. This, the Organization has failed to do. It is the opinion of this Board that Carrier has the right to demand a high degree of integrity from its employees and has the right to insist upon truthful and accurate statements made in their applications for employment. Carrier has successfully supported each and every contention of the Organization and has left the Claimant void of any defense. Claimant was dishonest in furnishing false information when completing his personnel record form prior to going into the service of Carrier on July 17, 1968, which gave Carrier the right, under Rule 801, to dismiss Claimant from service. Therefore, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1970.

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