

Award No. 6249
Docket No. 6113
2-SPT(PL)-MA-'72

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. 114, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current Agreement, Machinist Fred U. Maldonado (hereinafter referred to as Claimant) was unjustly dismissed from the Carrier's service on May 19, 1970.

2. That accordingly, the Carrier be ordered to:

(a) Restore Claimant to service with seniority rights unimpaired;
and

(b) Compensate Claimant for all time lost from date of dismissal until restored to service, with payment of 6% interest added thereto.

EMPLOYEES' STATEMENT OF FACTS: The Carrier first employed claimant as a Machinist Apprentice at its Los Angeles Diesel Shop on October 26, 1959. Claimant subsequently completed his four-year apprenticeship and was thereupon employed by the carrier as a machinist with a seniority date of September 16, 1964, a position he held until dismissal from service on May 19, 1970.

On February 26, 1970, claimant's assigned shift hours were from 3:00 P. M. to 11:00 P. M. Claimant reported for duty shortly before 3:00 P. M. and was unable to punch-in at the time clock due to the fact that his time card was missing.

Claimant thereupon reported to the clerk at the diesel shop office that he was unable to locate his time card and was subsequently issued an emergency card at approximately 3:25 P. M.

Upon being issued an emergency card, claimant proceeded to his regular assignment, which is performing truck work on tracks 7, 8 and 9 in the diesel shop.

Yes, sir.

Mr. Finlay, was Mr. Maldonado in violation of Rule 'G'?

In my opinion, yes, sir.

Was Mr. Maldonado in an unsafe working condition?

Yes, sir." (TR. 13-14)

The carrier here asserts that the above-quoted excerpts of testimony taken at the hearing of April 24, 1970, clearly and conclusively established the claimant's responsibility for being under the influence of narcotics while on duty and that his dismissal from service was entirely justified and commensurate with the offense.

Carrier respectfully requests that the claim in this docket be denied.

The Carrier, having already conclusively proven that the claim as submitted 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 Carrier submits that in the event the Board should sustain the claim insofar as the request for compensation is concerned, it should take into consideration the matter of deducting the amount earned in other employment during the period involved.

Rule 39 of the current agreement reads in part as follows:

'If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority right unimpaired, and compensation 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 Claim 2(b), "* * * with payment of 6% interest added thereto." There are no provisions, written or otherwise, in the current agreement which support the above claim; nor has circumstances ever arisen on carrier's property where such a claim has been accommodated. Therefore, unless Petitioner can show a contract provision supporting the above-noted claim, it is not properly before the Board and should be dismissed.

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 up 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.

This is a disciplinary case, in which claimant was charged with a violation of Rule G of the basic agreement.

A review of the evidence of the hearing indicates that finding of guilty as charged is fully supported. The decision by the Carrier to dismiss claimant from its service is neither arbitrary nor capricious. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1972.