

Award No. 6285

Docket No. 6128

2-IC-CM-'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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

ILLINOIS CENTRAL RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

"1. That under the current agreement, Car Oiler Marshall Parker was unjustly dismissed from the service of the Illinois Central Railroad on May 27, 1970.

2. That accordingly, the Illinois Central Railroad be ordered to reinstate Car Oiler Marshall Parker to service with seniority unimpaired, paid for all time lost, and any other benefits he would be deprived of while being held out of service."

EMPLOYEES' STATEMENT OF FACTS: Car Oiler Marshall Parker, hereinafter referred to as the Claimant, entered the service of the Illinois Central Railroad, hereinafter referred to as the Carrier, in the year 1952. At the time of the incident giving rise to the instant claim, Claimant was regularly employed by Carrier at Johnston Yard, Memphis, Tennessee.

On May 8, 1970, Carrier's Shop Superintendent F. E. Collins addressed the following letter to Claimant:

"Memphis, Tennessee, May 8th, 1970
(Johnston Car Shop)
PR-5582

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Marshall Parker,
5151 Manson Road,
Memphis, Tennessee 38109

Please arrange to be present in my office at Johnston Car Shop, Memphis, Tennessee, at 2:00 P. M., Thursday, May 14th, 1970, for a formal investigation to determine your responsibility, if any, for leaving your assignment as car oiler at Johnston Yard, Memphis, Ten-

Second Division holds that benefits such as Health and Welfare or Life Insurance premiums, etc., are not included within the meaning of the term "wage loss." See Awards 3883, 4532 and 4866.

Award 4988 is particularly relevant. It involved the same rule, the same company (Illinois Central) and the same question with respect to compensation for "wage loss" as the current dispute. In that case, after finding that the claimant had been improperly dismissed Referee Weston held:

* * * We will sustain the claim to the extent that Claimant's widow or estate will be reimbursed for all wages * * * that claimant would have received during that period. In view of Awards 3883, 4532 and 4866, we will not require Carrier to pay premiums for Health and Welfare, Life Insurance and other items mentioned in Part 2(b) of the claim.

Assuming without conceding that the claimant should not have been dismissed, he would be entitled only to the difference between what he actually earned during his dismissal and what he would have earned had he not been dismissed. The company submits that the dismissal was proper and the claim should be denied.

The company has shown that the claimant was guilty of deserting his assignment without either asking permission or at least notifying his foreman that he was leaving so that the foreman could arrange to call a relief employe. The claimant's flagrant disregard for his responsibilities under the rules cannot and should not be tolerated.

The company has also shown that the claimant's past record is anything but the record of a good employe who has tendered "long and faithful service" to the company. The magnitude of the offense coupled with the claimant's past record shows that dismissal was justified. Finally, the company has shown that if the claim is sustained, the rule limits remuneration to net wage loss: the amount he would have earned less any outside earnings.

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 in this case was charged with absenting himself from his position without properly obtaining permission from his supervisor. He was afforded a hearing under the rules of the Agreement, was found guilty as charged and subsequently dismissed from the service.

A review of the record of trial convinces us that the finding of guilty was based on more than substantial evidence. Carrier's action in dismissing claimant from service was neither arbitrary, discriminatory, nor capricious.

The record itself and the decision by Carrier is free from error and we will accordingly 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 28th day of March 1972.