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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6470
Docket No. 6355
2-MP-CM-'73

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company unjustly dismissed Carman Helper J. A. Brown, Dupon, Illinois, from service July 26, 1971, returning him to service effective March 20, 1972, but refusing to compensate him for time lost, including all benefits due him from the period July 26, 1971 to March 20, 1972, as provided for in Rule 32 of the controlling agreement.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Helper Brown in the amount of eight hours (8') per day, five (5) days per week at the pro rata rate beginning July 26, 1971, including all benefits accruing to any other employee in active service, vacation rights and seniority unimpaired until returned to service March 20, 1972.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, after an investigation, claimant was found guilty and ordered to be dismissed from the service. Carrier subsequently changed its decision and claimant was restored to duty.

The facts in this docket are as follows:

Claimant did not appear for work on July 12, 1971 due to his having been arrested as a suspect in a murder case. On that day, he was allowed to make one phone call from jail, that having been made by him to make arrangements for bail.

On July 13, his wife notified the Carrier that her husband was unable to report for work due to his arrest status. On July 23, claimant was indicted for murder by the Grand Jury. On July 26, having been released on bail, he reported for work, but was refused permission to assume his duties. He then was charged with "conduct unbecoming" etc. and with absence without leave and notified that the investigation would be held on August 4. At the request of his representatives, several postponements were granted and the hearing was held on September 24, 1971. The final decision rendered by the Carrier subsequent to the hearing was dismissed from the service.

On December 24, 1971, at the conclusion of his criminal trial, claimant was acquitted by the jury. On March 9, 1972, claimant was notified of Carrier's decision to re-instate him to service, which notice was received by him on March 11. He returned to Carrier's employ on March 20.

Claimant has submitted the instant claim for compensation in the amount of eight (8) hours per day, five (5) days per week at the pro rata rate beginning July 26, 1971, including all benefits accruing to any other employee in active service, vacation rights and seniority unimpaired until returned to service March 20, 1972.

The record before us is silent with respect to the circumstances leading up to the arrest, trial etc. of the claimant, but since he was acquitted of the charge, we feel that he should not be penalized for something which he evidently did not do. The investigation charges etc. initiated by the Carrier would never have come into being had he not been arrested and indicted. We think that under the circumstances, considering all relevant facts, claimant should in effect be made whole. We will sustain the claim, but the period of March 11 to March 20, 1972 is to be excluded from the compensatory period.

A W A R D

Claim sustained in accordance with opinion as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killian

Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.