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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6512
Docket No. 6358
2-SPT(PL)-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current agreement Locomotive Carpenter R. L. Terrell was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of October 11, 1971.
2. That accordingly the Southern Pacific Transportation Company be ordered to:
 - (a) Restore Claimant to service with all service and seniority rights unimpaired and compensate him for all time lost from October 11, 1971 to date of restoration to service.
 - (b) Grant Claimant all vacation rights.
 - (c) Assume and pay all premiums for hospital, surgical and medical benefits including all costs for life insurance.
 - (d) Carrier to pay into the Railroad Retirement Fund the maximum amount that is required to be paid for an active employee for all time he is held out of service.

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.

On September 1, 1971 an incident occurred at the Service Track, Los Angeles Locomotive Facilities of the Carrier. Claimant employed as a Locomotive Carpenter at that location allegedly suffered an in service injury as a result thereof. Claimant received an accident report form from supervision. The form was completed but not turned in by Claimant to Management until September 3, 1971. By Carrier's letter dated September 16, 1971, Claimant was cited for hearing for violation of Rule 801 of Carrier's General Rules and Regulations in that Claimant allegedly gave false information in said accident report.

The hearing was conducted on September 22, 1971 and Claimant was present and was represented by three duly designated officers of his Organization.

Early in the hearing, the Local Chairman of the Petitioner interposed the following:

"...we do have this statement to make at this time, based on the Railway Labor Board decision of 1941, First Division, July 11, 1941, settled in 1947, where referee ruled that injured employees with litigation pending against the company by an employee, that no hearing would be held until pending litigation is settled, therefore, this Committee respectfully requests that the hearing be postponed until the litigation between Mr. Terrell and the Southern Pacific Transportation Company has been adjudicated."

The hearing officer denied the request and proceeded to question witnesses and subject them to questioning by Claimant's representatives, who with Claimant remained at the hearing and did in fact examine witnesses. When Claimant was called upon to testify in his own behalf, he refused to answer material questions and presented a statement to the hearing officer which reads:

"On advice of my lawyer I cannot testify at this hearing because it may prejudice my pending law suit against Southern Pacific Company -

Based on Labor Board Award 11501 - 1st Division - 1941 and other Awards relative thereto."

There is nothing in this record to indicate that Claimant had in fact consulted an attorney, the name of same, or that in fact a law suit was ever commenced by Claimant on or before September 22, 1971 or at anytime thereafter. Contrast this with the facts in First Division Award No. 11501, relied upon so heavily by Claimant and Petitioner. On page 4 of said Award we find:

"POSITION OF CARRIER: Mr. Elving sustained an injury resulting in the amputation of his left arm; suit was instituted against the Northern Pacific Railway Company in April, 1941, by Mr. Elving to recover damages because of this injury; in this

"complaint Mr. Elving alleged that as a result of personal injuries his earning capacity was wholly lost and destroyed; at the trial of Mr. Elving's suit in June, 1941, evidence was presented to the court and jury by Mr. Elving and witnesses appearing ~~in~~ his behalf that his earning capacity was wholly lost and destroyed; the jury returned a verdict of \$13,000 in favor of Mr. Elving, which has been paid. After Mr. Elving failed to appear at the investigation on July 11, 1941, after proper notice to him thereof had been served upon him, he was advised that his services with the Railway Company were terminated and his employment record was closed out on the basis that he had been relieved from service because his earning capacity had been wholly lost and destroyed." (Emphasis supplied.)

It is clearly evident that there is no comparability between the fact pattern herein and that developed in Award 11501, and therefore its concepts cannot be found to be applicable hereto.

It must therefore be held that Claimant was afforded a hearing at which he was present and was duly represented. His refusal to defend himself was not grounded on valid and subsisting factors, as far as the record before us reveals. The hearing is found to have been in compliance with Rule 39 of the Controlling Agreement.

Based upon the record, it must be held that substantial evidence to sustain the charge was developed at the hearing. In Awards too numerous to cite we have refused to reverse or otherwise tamper with the discipline assessed by the Carrier under such circumstances.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killean

Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1973.