

The Second Division consisted of the regular members and in addition Referee David P. Twomey 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 withheld Carman T. W. Robertson from service starting March 1, 1974, and following investigation dismissed him from service effective March 19, 1974.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Robertson as follows:
 - (a) Pay for all time lost covering period March 1, 1974 until returned to service with seniority rights unimpaired;
 - (b) Made whole for all vacation rights;
 - (c) Made whole for all health and welfare and insurance benefits;
 - (d) Made whole for pension benefits **including** Railroad Retirement and Unemployment Insurance;
 - (e) Made whole for any other benefits he would have earned during the time he was withheld from service.
 - (f) In addition to the money amounts claimed herein Carrier shall pay Carman Robertson an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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.

on the matter. The Master Mechanic served as the Interrogating Officer for the investigation. The Claimant stated at the March 5th investigation that his last haircut was on February 28th. At the investigation, the Carrier took three pictures of the Claimant. These pictures are part of the record before us.

The Organization contends among other things that the Claimant was unjustly withheld from service and unjustly dismissed from service following the investigation.

The Carrier contends that the Claimant was disciplined for his failure to comply with instructions concerning his grooming within a reasonable time from the time he first received such instructions: that is, he was told by the notice on the bulletin board on November 5, 1973, what the standards were and did not comply until after he had been removed from service or, the Carrier contends, "accepting arguendo the Claimant's version, until the time of the investigation of March 5, 1974". (Carrier's Submission pg. 7). It is the Carrier's view that Claimant did not even attempt to get in compliance with instructions until cited for investigation. (Carrier's Submission pg. 8).

We find that the above contentions by the Carrier are untenable. The investigation of March 5th focused on the events of February 15th through March 5th. The letter from the Master Mechanic to the Claimant warned the Claimant that the Claimant must comply with the applicable standards on length of hair by February 28 or it would be necessary for the railroad to take disciplinary action. (TR 6). The investigation was held on March 5th to develop the facts and place responsibility for "having excessively long and unkept hair and repeated instructions from supervising officers and a more than a reasonable length of time to comply." (TR 1).

The dismissal notice signed by C. Percy, Jr., found the Claimant guilty of the charges set out in the notice of investigation. (See Carrier's Exhibit 2). The instructions from supervising officers, referred to in both the notice of investigation and the dismissal notice, took place at the delivery of the February 15th letter and on February 28th. It could be said instructions were given on March 1st, as well. The "more than reasonable length of time to comply" referred to in both the above-mentioned documents was the period from receipt of the letter dated February 15, 1974 and the required compliance date of February 28, 1974. It is untenable to argue to this Board that the Claimant was disciplined for failure to comply with the instructions within a reasonable time from the time he first became aware of the bulletin board notice of November 5, 1973. In no way was that the matter investigated on March 5, 1974.

Further, the Carrier's factual assertions in the above contentions are contrary to the transcript. The Claimant had his hair cut on February 25. The Claimant was advised that it was not in conformity with the standards

out of service, he subsequently had his hair trimmed to appear at his investigation. We find then that since his hair was in compliance with the standards on March 5th, then it was also in compliance on March 1st. We find therefore that the Claimant should be paid for all time lost from March 1, 1974 through May 7, 1974. Claimant suffered no vacation loss: health and welfare benefits and interest payments are denied as per a long line of awards of this Board.

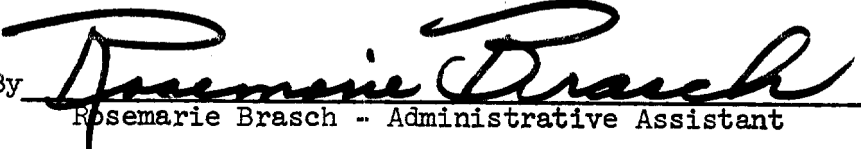
A W A R D

Claim sustained as per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March, 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD Serial No. 79
SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee David P. Twomey when the Interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 7030

DOCKET NO. 6942

NAME OF ORGANIZATION: System Federation No. 2, Railway Employees'
Department, A. F. of L. - C. I. O.
Carmen

NAME OF CARRIER: Missouri Pacific Railroad Company

QUESTION FOR INTERPRETATION:

Did the Board intend that the words in the findings of Award No. 7030, reading as follows:

"We find therefore that the Claimant should be paid for all time lost from March 1, 1974 through May 7, 1974. Claimant suffered no vacation loss; health and welfare benefits and interest payments are denied as per a long line of awards of this Board."

and the Award reading:

"Claim sustained as per opinion."

that under the terms and provisions of Award 7030, the Carrier had the right to deduct the amount of \$452.80, (vacation pay earned in the year 1973), from the total amount of lost wages due and payable by said Award for the period March 1, 1974 through May 7, 1974?

Second Division Award No. 7030 requires that the Claimant, Carman T. W. Robertson, be paid for "all time lost from March 1, 1974 through May 7, 1974".

When the Carrier wrongfully dismissed the Claimant on March 19, 1974, it paid him 10 days vacation pay, which was the total number of vacation days earned by the Claimant as of that date. Upon receipt of Award 7030, the Carrier deducted \$452.80, an amount equal to 10 days' vacation allowance, from the back pay paid to the Claimant for the March 1, 1974 through May 7, 1974 period during which the Claimant was wrongfully withheld from service.

INTERPRETATION NO. 1 TO AWARD NO. 7030 (DOCKET NO. 6742) Serial No. 79

The Carrier contends that it is in conformity with Award 7030 which requires that Claimant be paid "for all time lost from March 1, 1974 through May 7, 1974" in that an employee who is off on vacation and is granted the proper amount of vacation allowance has not "lost" any time during such vacation period. The Carrier designated the days from March 16 through March 29, 1974 as days allocated for vacation purposes.

We find that the Carrier's contention is incorrect. The Claimant unquestionably was not in fact on vacation status from March 16 through March 29, 1974. The Claimant was wrongfully being held out of service on the days of March 16 through March 29, 1974. Since the Claimant, because of the \$452.80 deduction, received no vacation in 1974, he shall be compensated by the Carrier in the amount of \$452.80.

Referee David P. Twomey who sat with the Division as a Member when Award 7030 was rendered, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
 National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of February, 1979.