

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement Traveling Motor Car Mechanic P. R. Diaz (hereinafter referred to as Claimant) was improperly dismissed from the service of the Carrier on April 2, 1976.
2. That, accordingly the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of dismissal to date of restoration to 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.

Claimant, a Motor Car Mechanic, was dismissed from service, April 2, 1976, following a hearing wherein Carrier successfully established that Claimant had falsely reported to it, a personal injury sustained on February 27, 1976, in an off-duty, but on-property, altercation with a friend, as being an injury which had occurred while in an on-duty status.

This case differs from those cases wherein an employe feigns personal injury and willfully and fraudently reports same to Carrier as being an injury which occurred while on duty. Here, several hours after going off duty on February 27, 1976, Claimant, who was still on the property, was involved in a brief altercation. As a result he was struck in the face by a friend and fellow employe. Thereafter he went home. Claimant went to a hospital, near his home, for emergency treatment shortly after the

altercation. When questioned as to how the facial injury occurred, Claimant, thinking that he was avoiding involvement of his friend, and eliminating a problem with the company, because it had occurred on the property, as well as any possible domestic implication, stated that while loading his truck his foot slipped on the back of the truck and he hit his face on the tool box. Said hospital's routine report to the California Department of Industrial Relations was thereafter passed on to Carrier thus giving it notification of an on-job injury and cause for inquiry thereon. Representatives of the Carrier visited Claimant to talk about another matter as well as this incident. Such representatives were, at that time, well aware of the fact that Claimant had been involved in an off-duty altercation on February 26, 1976. Said representatives requested that Claimant fill out an accident report. Claimant advised that he didn't desire to and wished to have the matter dropped. However, the Carrier's representatives insisted that he fill out such report. He did and thus perpetrated the fraud by stating therein that he had been injured on duty.

Claimant's testimony was refreshingly candid. He was forthright. Claimant freely admitted that he had committed the fraud. The Board was impressed by Claimant's sincerity and honesty. It appears that Claimant's purpose in misleading Carrier was not motivated by an intent to defraud Carrier but rather (it was) by an effort to avoid creating problems for a friend and himself. He was wrong nevertheless. However, we believe that Claimant is contrite and truly sorry for what he did. Claimant has an otherwise clear record in his seven years of service. He has now been out of service for over two years. Such time has permitted him to learn the valuable lesson that honesty is always the best policy and that had he followed such a policy he would not have been in his present predicament.

Accordingly it is concluded that the discipline has now served its purpose and order that Claimant be reinstated to service, with all rights unimpaired but without pay for time out of service subject to the usual return-to-service physical examination, as well as the caveat that if perchance Claimant does not recognize the seriousness of dishonesty in word and deed, he is reminded that any such future conduct, if proven, could result in permanent dismissal.

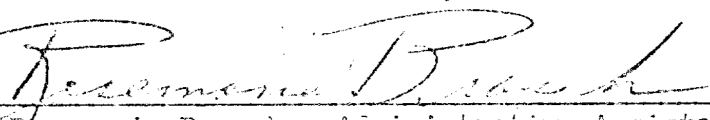
A W A R D

Claim disposed of as per findings.

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 19th day of May, 1978.