

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

Parties to Dispute: (International Association of Machinists and Aerospace
(Workers - District Lodge No. 19 - AFL-CIO
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist F. R. Berumen (hereinafter referred to as Claimant) from service on December 14, 1982.

2. That, accordingly the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired with compensation for all wage loss.

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 employes 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.

The Southern Pacific Transportation Company dismissed Machinist F. R. Berumen from Service December 14, 1982 based upon an alleged violation of Rule 801 of the General Rules and Regulations which specifies that dishonest employees will not be retained in service.

Claimant was a Machinist in the Truck Shop at the Los Angeles Locomotive Repair Facility. He had more than approximately 25 years service. His supervisor indicated that Berumen asked and received permission to go to the Railroad Retirement Board at 11:30 August 16, 1982. The following morning he called in indicating that he had hurt his knee the previous day.

Fellow workers who worked near Claimant, testified that on the 16th they did not see or learn of any accident he may have had. One did state that Berumen told him that he was going to retire at the end of August, had a "plan" to collect two more checks and then was going to retire.

Berumen maintained that, while pushing a box, he had hit his left knee, and fell. He resumed work immediately. Claimant did not, however, visit the Railroad Retirement Board as planned that day because of his alleged injury. Although Claimant's injury, he said, caused him to go home instead of to the Railroad Retirement Board, he contends that his knee did not hurt and he did not believe the problem to be severe enough to report.

Claimant received \$17,000 in settlement of a case he filed arising out of the injury of the 16th with the Carrier's Claim Department. He applied for retirement in January, 1983.

The evidence indicates that while employees who worked near Claimant on the 16th were unaware of any accident occurring that day, and Claimant failed to report any accident until the following day, the Carrier did recognize that an industrial injury occurred by payment of compensation therefor. Furthermore, the diagnosis of the Medical Center where Claimant was treated August 19th prescribed heat for the lower back and knee. Although the failure to report casts suspicion upon the claimed knee injury occurring August 16th, the evidence is insufficient to establish that Claimant falsely reported an accident. He was not disciplined for failure to report the incident.

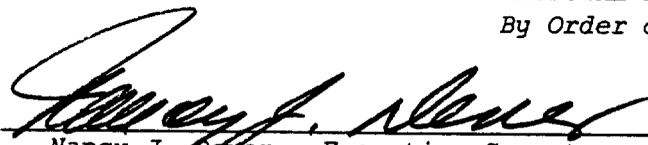
Claimant to be made whole for any loss of wages from the date he was taken out of service through the date of his retirement, less outside earnings or other compensation received allocated to this period and further provided that Claimant establish that he was able to perform his duties as a Machinist during this period.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.