

Award No. 1328
Docket No. 1254
2-SP(PL)-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Machinist Helper E. R. Cortez was unjustly dismissed from the service at the close of his shift on May 14, 1948, and that accordingly the carrier be ordered to reinstate this employe to all service rights with pay for all time lost since said date.

EMPLOYES' STATEMENT OF FACTS: The carrier employed E. R. Cortez, hereinafter referred to as the claimant, on January 22, 1945, as a machinist helper at Los Angeles, California, and his regularly assigned hours on May 14, 1948, were from 7 A. M. to 3:30 P. M..

This claimant was detained from reporting off or reporting for duty during the period of March 6 to March 12, 1948, inclusive, but he did report, as soon as he was free, to his foreman on Saturday, March 13, that he was available for returning to duty, and resumed his regular assignment on Monday, March 15, 1948.

On April 23, 1948, the carrier preferred charges against this claimant for violating ex parte rules, as well as violating Rule 25 of the current agreement, and therein set his hearing at 1 P. M. on April 26. A copy of this transaction from Shop Superintendent McHugh to the claimant is submitted, identified as Exhibit A. However, by mutual arrangements between the parties, this hearing was not held until 1 P. M. on April 29, 1948, and a copy of the hearing transcript record is submitted, identified as Exhibit B.

On May 14, 1948, the carrier dismissed this claimant from the service at the close of his shift on that date, and a copy of this transaction from Shop Superintendent McHugh to the claimant is submitted, identified as Exhibit C.

The dismissal of this claimant has been handled in accordance with the terms of the current agreement effective April 16, 1942, up to and with the highest designated carrier officer to whom such matters are subject to appeal, with the result that this officer has declined on more than one occasion to settle this dispute.

The carrier therefore asserts that in the event the Board considers the matter of compensation to the claimant for time lost, it is incumbent upon the Board to follow the logical and established principle set forth above and require that any and all earnings by the claimant during the period for which compensation is claimed be deducted.

CONCLUSION

Having conclusively established that the claim in this docket was not presented or progressed in accordance with controlling provisions of the current agreement, the carrier respectfully submits that it should be dismissed.

If, however, the Board elects not to dismiss same, the carrier then respectfully requests that the claim be denied on the showing it has made that the claim in its entirety is without merit.

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.

The parties to said dispute were given due notice of hearing thereon.

The circumstances surrounding this family spat and resultant detention of claimant in jail for a period of six days, in face of the testimony of a number of supervisors, fellow workers and neighbors, that he was neither quarrelsome nor otherwise vicious, are deemed insufficient to constitute a violation of either the letter or the spirit of Rule 801 of the General Rules and Regulations of the carrier.

Claimant's failure to notify carrier of his detention for three days under the circumstances here present was excusable, and his absence from work unavoidable within the meaning of Rule 25. Accordingly carrier is found to have acted arbitrarily and in abuse of discretion in dismissing claimant from the service. Finding claimant's dismissal unjust, his right to pay for all time lost, retroactive to date of discharge, follows under Rule 39.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.