

Award No. 1446
Docket No. 1352
2-SP(PL)-EW-'51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: (a) That under the current agreement Electrician Howard W. Pujol was unjustly dismissed from the service on September 2, 1947.

(b) That, accordingly, the carrier be ordered to reinstate him to all service rights and compensation for all time lost since the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: The carrier employed Howard W. Pujol, (hereinafter referred to as the claimant), September 3, 1939, as an electrician at Los Angeles, California, in the motive power and car department. The claimant was regularly assigned to work the hours of 4:00 P. M. to 12 midnight.

On August 6, 1947, a letter was directed to the claimant by Master Mechanic N. L. McCracken, advising him to be present at a formal investigation at 4:00 P. M., Monday, August 11, 1947, a copy of which is submitted and identified as Exhibit A.

The investigation was held on August 11, 1947.

On September 2, 1947, a letter was directed to the claimant by H. R. Gernreich, advising him he was dismissed from the service of the Southern Pacific Company. A copy is submitted and identified as Exhibit B.

This dispute has been handled with the carrier officers up to and including the highest designated officer to whom such matters are subject to appeal, with the result that they did agree to reinstate the claimant without compensation, which is affirmed by the letter submitted herewith, dated January 17, 1948, identified as Exhibit C.

The agreement effective April 16, 1942, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the claimant committed no offense, neither was he insubordinate about 4:30 P. M. on August 2, 1947, about a half hour after his shift began, which could be construed

Acme and Pacific Railway Company, (District Court of the United States, Northern District of Texas, Dallas Division No. 772 Civil):

“It would not be right to allow him to recover what he would have made from the defendant Railway and also keep in his pocket what he did make with other employers during the time.”

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 the 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 employees 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.

Claimant failed to comply with the provisions of Rule 38.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1951.