

Award No. -1928

Docket No. 1858

2-SP(PL)-CM-'55

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Carmen)**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**DISPUTE: CLAIM OF EMPLOYEES:** That under the current agreement, Coach Cleaner Ernesto Torres was unjustly dismissed from the service on August 6, 1954, and that, accordingly, the Carrier be ordered to reinstate him in the service with all rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** Ernesto Torres, hereinafter referred to as the claimant, was employed January 6, 1953, in the San Francisco coach yard, San Francisco Car Department, San Francisco, California, by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier. The claimant's assigned hours were 2:30 P. M. to 10:30 P. M. (PST), with a lunch period of 20 minutes, Sunday through Thursday, with rest days Friday and Saturday.

The carrier's general car foreman, Mr. T. L. Barter, of the coach yard and car department, San Francisco, California, made the election to summon the claimant to stand trial-hearing at 8:00 A. M. (PST), on July 29, 1954, on the charges contained in the trial-hearing record.

The hearing was held as scheduled and a copy of the transcript thereof is submitted herewith and identified as Exhibit A. On August 6, 1954, the carrier's superintendent of Coast Division, Mr. J. J. Jordon, made the election to dismiss the claimant from the service of the carrier, which is affirmed by the copy of letter to the claimant by Mr. J. J. Jordon, submitted herewith and identified as Exhibit B.

This dispute has been handled up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

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

**POSITION OF EMPLOYEES:** This dispute is subject to be determined on the basis of the facts, in the consists of Exhibit A, the parties jointly conducted hearing record on July 29, 1954, in conjunction with the application of rules of the aforesaid agreement made between the carrier and System Federation No. 114 in pursuance of the Amended Railway Labor Act.

to his own actions and neglect, and that therefore he is not entitled to any compensation subsequent to that date. Moreover, the Board should take into consideration the matter of deducting the amount earned in other employment during the period involved.

Rule 39 of the current agreement reads in part as follows:

“If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for wage loss, if any, resulting from said suspension or dismissal.”

The Board will note that this rule provides for compensation for “wage loss, if any”. This can only be interpreted as meaning the difference between the amount that would have been earned had the employe not been discharged or suspended, and the amount that the employe actually earned in some other capacity during the period of his discharge or suspension. The sole purpose of this rule was to provide for compensating the employe for any wage loss suffered by virtue of an improper discharge or suspension. It was not intended that this rule should operate so as to permit the employe to receive double compensation, which would be the case if no deduction were made for the amount that the employe actually earned during his period of discharge or suspension from the carrier’s service. The carrier’s position in this respect is sustained by numerous awards of the National Railroad Adjustment Board, some of which are as follows:

In Second Division Award 1638, with Referee Edward F. Carter, statement is made under “Findings” as follows:

“Whatever the method of calculating the compensation may be, a deduction of outside earnings is required . . .”

In First Division Award 15765, with Referee Edward F. Carter, statement is made under “Findings” in part as follows:

“Claimant is therefore entitled to recover the amount he would have received as wages had the contract been performed from July 12, 1950 to December 19, 1950, less what he earned in other employment during that period, or what he might by reasonable diligence have earned in other employment during such period.”

This position is also sustained by First Division Award 15258, with Referee Curtis W. Roll, rendered on January 26, 1954, wherein it was ruled that outside earnings would be deducted when payment is made for wage loss. In this connection also see First Division Award 16558.

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 is without merit, carrier respectfully submits that it be denied.

**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 the dispute were given due notice of hearing thereon.

In this case, discipline was properly imposed. We are of the opinion, however, that considering all of the circumstances of this case, claimant should be reinstated with seniority unimpaired without pay for time or wage loss.

AWARD

The claimant shall be reinstated with seniority unimpaired. His claim for time or wage loss is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1955.