

Award No. 2653
Docket No. 2533
2-SP(PL)-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Electrical Workers)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company elected to and did on April 20, 1956 unjustly dismiss from its service Electrician S. E. Downing under the current agreement.

2. That accordingly the Southern Pacific Company be ordered to:

a) Reinstatement this employee with all rights, including his vacation rights, unimpaired.

b) Compensate this employee for his wage loss resulting from the aforesaid action until he is restored to service.

EMPLOYEES' STATEMENT OF FACTS: The Southern Pacific Company (Pacific Lines), (hereinafter called the carrier), employed S. E. Downing as an electrician at Los Angeles, California, and he has remained in the employment thereof as such for approximately five years, thereby rendering creditable and efficient service without complaint until the instant case occurring on February 22, 1956. However, Electrician S. E. Downing's (hereinafter referred to as the claimant) regularly assigned current hours of work, days of work and off days were:

"1. At Mission Road Coach Yard from 7:59 A.M. to 3:59 P.M. Saturday; 7:59 A.M. to 3:59 P.M. Sunday; 11:59 P.M. Sunday to 7:59 A.M. Monday; 11:59 P.M. Monday to 7:59 A.M. Tuesday.

2. At Los Angeles Union Passenger Terminal from 11:00 P.M. Tuesday to 7:00 A.M. Wednesday.

actually earned during 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 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.

A similar claim arising out of the same circumstances was disposed of by our Award No. 2532. The only difference being that the claimant there was asleep in the carman's shanty whereas this claimant was asleep in an R.P.O. car. That appears to be a difference without a distinction because both were in the immediate vicinity of the track on which the cars were expected upon which they were next assigned to perform service.

There cannot be any condonation of loafing or sleeping while on duty. However, the abrupt change in policy, instituted by the new superintendent of the terminal, without notice to the employes or their supervisors renders discharge an excessive, arbitrary and capricious penalty. To that extent our former findings are confirmed.

AWARD

Claim sustained. Deduction of outside earnings shall be made in computing compensation due.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 28th day of October, 1957.