

Award No. 2851

Docket No. 2772

2-UP-SMW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Sheet Metal Worker A. W. Noble of Los Angeles was unjustly dealt with when he was deprived of his service rights and removed from service effective May 17, 1956.
2. That, accordingly, the Carrier be ordered to:
Compensate this employe for all wage loss retroactive to May 16, 1956, and until he was reinstated effective December 5, 1956.

EMPLOYEES' STATEMENT OF FACTS: A. W. Noble, hereinafter referred to as the claimant, was employed by the Union Pacific Railroad Company, hereinafter referred to as the carrier, at Los Angeles, California, as a sheet metal worker on April 19, 1948.

Under special agreement the claimant was working at the Los Angeles Union Passenger Terminal on the 11:00 P.M. to 7:00 A.M. shift Saturday through Wednesday with Thursday and Friday as rest days. While working at this passenger terminal, claimant retained and accumulated seniority with the carrier at his home point.

On February 29, 1956, Assistant Superintendent W. R. Fread of the Los Angeles Union Passenger Terminal wrote a letter, copy submitted herewith and identified as Exhibit A, notifying the claimant to appear for formal investigation at 8:30 A.M. Monday, March 5, 1956, in connection with charges of allegedly loafing and sleeping on duty.

The hearing was conducted by Assistant Superintendent W. R. Fread of the Los Angeles Union Passenger Terminal, as scheduled continuing through March 6, and 7, 1956.

The claim in this docket has no merit, and must 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 said dispute were given due notice of hearing thereon.

On February 22, 1956 Claimant A. W. Noble was working at Los Angeles Union Passenger Terminal and was governed by rules of the Southern Pacific Railroad. He was found asleep by officials of Los Angeles Union Passenger Terminal in company with various others. On March 13, 1956 he returned by bid to his original employment with the Union Pacific Railroad where he had been acquiring seniority. Officials of Los Angeles Union Passenger Terminal held an extensive investigation during March 5, 6 and 7, 1956.

The Union Pacific removed the claimant from its service by letter dated May 14, 1956. On December 5, 1956 he returned to service with the Union Pacific, "pending disposition of his claim for time lost."

We are inclined to concur with Awards Nos. 2523 and 2653 of this Division which reinstated with pay, minus outside earnings, the two Southern Pacific employes involved in the same investigation. The Union Pacific has not given the claimant the fair hearing required by the rule and has assessed a penalty which is arbitrary under the peculiar circumstances disclosed.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May, 1958.