**Award No. 4221**
**Docket No. 4148**
**2-SP-CM-'63**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.**

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## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**SOUTHERN PACIFIC COMPANY**
**TEXAS & LOUISIANA LINES**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman W. K. Wilson was unjustly dealt with, when he was removed from service on May 12, 1961.

2. That accordingly, the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and with compensation for all time lost retroactive to and including May 12, 1961.

EMPLOYES' STATEMENT OF FACTS: Carman W. K. Wilson, hereinafter referred to as the claimant, was employed by the Texas and New Orleans Railroad Company, hereinafter referred to as the carrier, as a freight car repairman in the Englewood freight car shops at Houston, Texas.

When the claimant reported for work at 7:00 A. M. on Friday, May 12, 1961, he was not allowed to go to work. He was handed a letter dated May 11, 1961, over the signature of Superintendent of Shops Mr. P. L. Scott setting forth a charge against the claimant being suspended from service pending a hearing.

The hearing was held on May 16, 1961, by Assistant Superintendent R. J. Rohlf with Mr. P. L. Scott in attendance testifying from time to time.

The carrier did not let the claimant go to work and on June 6, 1961 Superintendent of Shops, P. L. Scott notified the claimant that he was dismissed from service.

Should the Board erroneously rule that the appeal herein has merit and direct the carrier to reinstate this former employe with pay for time lost, we call your attention to the fact that the carrier should be allowed to deduct the amount of any compensation earned in outside employment during the period in question. See Second Division Award 1638.

The Carrier asserts that the employe's claim is without merit and we respectfully request your Honorable Board to so decide.

**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.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, Carman W. K. Wilson, a Carrier employe since December 20, 1948, worked the 7:00 A. M. to 3:30 P. M. shift at the Carrier's Englewood Freight Car Shops, Houston, Texas, until he was removed from service on May 12, 1961, and continued in that status until his dismissal on June 6, 1961.

On May 11, 1961, the Claimant was charged with using profanity toward a foreman, being insubordinate, failure to comply with instructions to move his car from an improper parking area, and leaving his assignment without proper authority.

The profanity charge against the Claimant is dismissed for lack of supportive evidence. The charge of leaving his assignment without proper authority — although not undeniably established in the record — does, in our opinion, contain sufficient supportive evidence to give it validity.

The charges of insubordination and failure to comply with instructions are irrefutably established by the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: *Harry J. Sassaman*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June, 1963.

**LABOR MEMBERS DISSENT TO AWARD NO. 4221**

The majority's statement:

"The charges of insubordination and failure to comply with instructions are irrefutably established by the record."

is not as emphatically so as they have been persuaded to believe.

The parking area property upon which the claimant's car was parked was challenged by the employes' representative as to whether said property was public or private.

The record reveals that the carrier failed to prove ownership or clear up this point in any manner — therefore, certainly if the claimant was parked on a public city area then the carrier had no right to order him to move his car; so it follows he could not have been insubordinate and being cleared of all other charges, this award should have been in the affirmative.

We dissent.

**C. E. Bagwell**

**T. E. Losey**

**R. E. Stenzinger**

**E. J. McDermott**

**James B. Zink**