



Award No. 5011
Docket No. 4958
2-PTRA-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

PORT TERMINAL RAILROAD ASSOCIATION

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman W. C. Velasquez was unjustly discharged from service November 19, 1964, through January 27, 1965, inclusive.

2. That the Carrier be ordered to compensate W. C. Velasquez for fifty (50) days time, November 19, 1964 - January 27, 1965, inclusive, in the amount he lost in wages during that period, due to being held out of service.

EMPLOYEES' STATEMENT OF FACTS: Carman W. C. Velasquez, hereinafter referred to as the claimant, is employed as a carman by the Port Terminal Railroad Association, hereinafter referred to as the carrier at Houston, Texas. On November 5, 1964, Carrier's Car Foreman C. M. Lucas, addressed a letter to the claimant, reading:

"Houston, Texas - November 16, 1964
Time: 9:30 A.M.

This hearing is being held pursuant to a notice dated Nov. 5, 1964, reading as follows:

November 5, 1964

Mr. W. C. Velasquez
7540 Avenue E
Houston, Texas

Dear Sir:

It has been reported to the Port Terminal Railroad Association Management that as of October 31, 1964, you on

mit a dishonest act. It should be remembered that claimant's contention in this respect was uncorroborated. It is self-evident that the carrier must, in determining intent, consider only the weight of testimony and evidence adduced at the hearing. It is firmly established by many awards of your division that it is properly the function of the carrier's management to weigh evidence and resolve conflicts therein. In the instant case there is an overwhelming preponderance of evidence and repeated admissions by the claimant that a false time return was submitted, and this proven fact cannot be set aside by an unsupported assertion of the claimant that while the false time return was in fact submitted it was not his intention to do so.

The carrier further submits that the discipline imposed was not unduly severe. The dispute here does not involve permanent dismissal. Claimant was reinstated to service on January 27, 1965, following suspension of seventy calendar days. The petitioner is urging the division to ignore the preponderance of evidence before it and to arbitrarily rescind the brief period of suspension imposed for a manifest attempt by the employe to charge the carrier for time not worked. The carrier again reminds the division that it has repeatedly upheld the prerogative of managerial discretion in the assessment of reasonable discipline and has repeatedly declined to intervene where the discipline imposed is not unreasonable. The carrier is simply requesting the division to follow its own long line of precedents in the instant case.

The carrier respectfully requests a denial award in all respects.

Also involved in this dispute is the fact that on December 16, 1964, the Brotherhood of Railroad Trainmen called a strike of yardmen on the Port Terminal Railroad Association, and on Dec. 17, 1964, the association abolished a number of positions affected thereby, including all carmen and carmen helper positions. The positions affected remained in this status until Feb. 1, 1965. The time lost by Velasquez without pay by reason of the discipline imposed therefore extended only from Nov. 19 to Dec. 16. Should the division erroneously rescind any part of the suspension imposed, Velasquez lost no pay after December 16 by reason of the suspension and in equity would not be entitled to recover pay during the time his position was abolished because of the strike.

Should the board disagree with the carrier in its action herein described and reinstate the claimant with pay for time lost, the carrier, in that event, respectfully asks the board to allow the deduction of outside earnings in line with the many awards of the Second Division reaching such result.

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.

A careful examination of the record does not support the charge that Claimant falsified his wage claim. It shows merely that when commencing his regular tour of duty he had followed a foolish but not unusual practice of making out beforehand a time slip to cover his expected day's work of eight

hours, which in this instance was an anticipation that led to most unfortunate consequences. Later, after working but 2¼ hours, Claimant became ill, requested relief from further duty that day, and went home. The next day, when making out his time slip for November 1st, he also made out a corrected time slip for October 31st claiming only the 2¼ hours he had actually worked on said day. His intention was to mail these two time slips together, but later he learned that in some undetermined manner his time slip for November 1st was received by the Car Department along with the erroneous time slip for October 31st claiming pay for 8 hours. Later, the time slip for 2¼ hours was found by a carman, Mr. Coslett, and Mr. Kelley, the clerk, in the desk drawer in the locker room where the carmen stay in Pasadena and where Claimant kept the pad of time slips used by him.

In this situation, it appears proper that Claimant, who was discharged from service November 19, 1964, should have been reinstated, as the record shows he was, with seniority unimpaired, as of January 27, 1965. However, it further appears that on December 16, 1964 the Brotherhood of Railroad Trainmen called a strike of yardmen on the Port Terminal Railroad Association and on December 17th the Association abolished a number of positions affected thereby including all carmen and carmen helper positions. The positions affected remained in this status until February 1, 1965, so time lost by Claimant without pay on account of discipline imposed extended only from November 19 to December 16.

The claim should be sustained, but pay recovered should only be from November 19 to December 16.

AWARD

Claim sustained to the extent stated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December, 1966.