



Award No. 6001

Docket No. 5863

2-SP(PL)-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Maintenance of Way Electrician M. Michoff was unjustly treated when he was dismissed from service on July 2, 1968, for alleged dishonesty in connection with an accident claim regarding injury while on duty on April 15, 1968.

2. That accordingly, the Carrier be ordered to:

- (a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired and compensate him for all time lost.
- (b) Reinstate all vacation rights for the aforesaid employe.
- (c) Pay Southern Pacific Employees Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employe is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Maintenance of Way Electrician M. Michoff, hereinafter referred to as the claimant, was regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, and regularly assigned prior to April 15, 1968, as an electrician under the supervision of W. M. Jones, Superintendent, Western Division, with headquarters at San Francisco, California.

On the morning of April 15, 1968, claimant arrived on the property and reported for duty at 7:45 A.M. After reporting, claimant, along with Electrician D. Blakemore, proceeded to the Car Department Electrical Shop and started to dismantle a D. C. switchboard. The dismantling of this switchboard consisted of removing electrical appurtenances, pushing the slate

dismissal of the claimant was not justified and proper, the carrier submits that in the event the Board should sustain the claim insofar as the request for reinstatement is concerned and gives consideration to the matter of compensation for time lost, 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 the wage loss, if any, resulting from said suspension or dismissal."

The Board has previously interpreted this rule providing for compensation for "wage loss, if any" as requiring deduction of outside earnings in computing compensation due. See Second Division Awards 2523 and 2653.

With respect to remainder of claim requesting:

"(b) Reinstatement all vacation rights for the aforesaid employe.

(c) Pay Southern Pacific Employees Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employe is held out of service."

Following his dismissal, claimant was allowed all vacation pay to which he was entitled in accordance with the controlling vacation agreement. Carrier is not aware of any other vacation rights which would flow to the claimant under the vacation agreement and, in fact, asserts there are none. Petitioner's requests that the company pay premiums for hospital, surgical and medical benefits and pay the premiums for life insurance, are not supported by any rule, custom or practice in effect on carrier's property and, carrier asserts, are not properly referable to your Honorable Board.

CONCLUSION

The carrier respectfully submits that having conclusively established that the claim is entirely without merit, it should 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.

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

Two issues are presented here for determination: (1) Was Carrier obligated to postpone an investigation and hearing pending the results of a civil suit involving a claim against Carrier on the grounds that Claimant's appearance might jeopardize his case before the courts; and (2) Was there sufficient evidence to justify Carrier's action in dismissing Claimant.

With respect to the first question, the Board finds that there is no basis, by Agreement or otherwise, to require Carrier to postpone a hearing and investigation pending the disposition of a civil suit. Whether or not Claimant's appearance and testimony would "jeopardize" his case before the court and place him at an "unfair advantage in favor of Carrier" is a matter of speculation. The parties, through negotiation, have agreed upon provisions having to do with investigations and hearings regarding discipline (Rule 39). If the procedure is faulty, then it is up to the parties to change it.

With respect to the second question, there is ample uncontradicted evidence to warrant the action taken by Carrier. There is nothing in the record to show that Carrier was arbitrary or capricious.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.