Award No. 6084
Docket No. 5892
2-SP(PL)-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

SOUTHERN PACIFIC TRANSPORTATION COMPANY (PL)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement, Mechanical Department Electrician Thomas A. Sylvia was unjustly treated when he was dismissed from service on September 27, 1968, for alleged violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Company (Pacific Lines)

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 Employes Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employe is held out of service.

EMPLOYES' STATEMENT OF FACTS: Mechanical Department Electrician Thomas A. Sylvia, 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 September 14, 1968, as an electrician under the supervision of E. I. Norman, Superintendent of Shops, Sacramento Division, with headquarters at Sacramento, California.

On the morning of September 14, 1968, claimant reported for duty at 7:00 A. M., and found that his time card was not in the usual location. Claimant then approached Foreman L. G. Hurley regarding the missing time card and Mr. Hurley referred him to General Foreman R. H. Sixby. Mr. Sixby

The carrier asserts that the contention of the petitioner is unsupported by the facts.

Having clearly and conclusively established that the claim in this docket is without basis or merit, carrier respectfully requests that it be denied in its entirety.

ANALYSIS OF CLAIM

The carrier, having already conclusively proven that the claim as submitted is, in its entirety, without merit, is confident the Board will deny it. Notwithstanding this position and in no way admitting that the carrier's 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) Reinstate all vacation rights for the aforesaid employe.

(c) Pay Southern Pacific Employees Hospital contribution, including dependants' hospital, surgical, medical and death benefit premuims 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 referrable 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.

This is a disciplinary case in which Claimant after having been properly apprised of the charge, was afforded a fair and impartial hearing, the final result of which involved a finding of guilty with a consequent dismissal from the service.

On September 23, 1968 he was accorded a hearing under the rules of the applicable agreement on the charge of threatening the life of Laborer George M. Mitchell on September 13, 1968 on Company property during his regular working hours in violation of Rule 801 which reads in part as follows:

> "Employees who are quarrelsome, or otherwise vicious, will not be retained in the service."

The testimony of Laborer Mitchell, who was the subject of the threats etc., was corroborated by another eye witness. It is true that four other witnesses testified that they were at the scene when the incident allegedly took place and that they neither saw nor heard any altercation. It is true that we have a conflict in testimony, but as said in Third Division Award 16637 (McGovern), it is not our function to resolve such a conflict. We are not able to judge the credibility of witnesses since we were not present to observe their conduct and demeanor. There is substantial evidence in the record to justify the hearing officers' decision in this matter, and we find therefore that his decision was neither arbitrary nor capricious. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1970.

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