

Award No. 6106
Docket No. 5949
2-SP(PL)-MA-71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. L. - C. I. O. (Machinists)**

SOUTHERN PACIFIC TRANSPORTATION COMPANY (PL)

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current Agreement, Machinist Jack Zawitkoski (hereinafter referred to as Claimant) was unjustly suspended from service on September 2, 1969, and dismissed from service on September 29, 1969.

2 — That accordingly the Carrier be ordered to:

(a) Restore Claimant to service promptly with all seniority and service rights unimpaired; and

(b) Compensate Claimant for all time lost as a result of improper suspension on September 2, 1969, and his subsequent dismissal on September 29, 1969.

EMPLOYEES' STATEMENT OF FACTS: Machinist Jack Zawitkoski was employed by the Southern Pacific Transportation Company, hereinafter referred to as the carrier, at its System Maintenance of Way Shop in Oakland, California, with assigned shift hours 7:30 A.M. to 12:00 Noon and 12:30 P.M. to 4:00 P.M. At the time of his suspension from service on September 2, 1969, and subsequent dismissal on September 29, 1969, claimant had accumulated approximately eleven (11) years of faithful service with the carrier.

On Friday, August 29, 1969, claimant reported for duty and commenced work at 7:30 A.M. on a job assignment given him by his supervisor, Mr. Freitas. Claimant was performing his assignment when he was ordered to remove some equipment and parts from the floor by a fellow employe, Mr. W. P. Hill. Claimant did not comply with Mr. Hill's orders due to the fact that the equipment in question was too heavy and requested the use of a crane to move.

Yes, after the special agent had examined his tool box and turned his personal tools over to him and his own small tool box, then I approached Mr. Zawitkoski and informed him that he was out of service until further notice.

Did you also tell him that he would receive written notice to appear at a formal hearing?

I did that at that same time." (TR. 36-37-38-39-40-41)

The foregoing establishes clearly and convincingly that claimant viciously attacked the person of a fellow employe, that the weapon employed for this purpose was forcibly retrieved from the Shop Superintendent, and that he departed the premises without license for doing so having been obtained. Carrier submits that no more documentation than this should be required to justify claimant's separation from its service. The Board is requested to concur with that judgment and to deny the claim before it in this instance 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 compensation is concerned, it 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 compensation 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 Award 2523 and 2653.

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 claim that machinist J. Zawitkoski was unjustly suspended from service on September 2, 1969, for violation of Carrier Rules 801 and 802, in that he was involved in an altercation with another employe during the course of which, the claimant is alleged to have struck and injured the other employe with a tool.

Review of the entire record has persuaded the Board that in fact the Claimant, during an altercation, did strike and injure another employe. The Board is denying the claim for this reason, and because the use of violence at the work place cannot be condoned, and because it is essential to encourage use of the means available for the peaceful resolution of differences among and between employes.

The record also revealed that Carrier's dismissal of Claimant was not arbitrary, or capricious, and that Claimant was afforded the fullest measure of due process under the Agreement, and that the dismissal was just and not excessive or unreasonable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1971.