

Award No. 6128
Docket No. 5921
2-SP(PL)-MA-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC TRANSPORTATION COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Machinist Helper Carlos Garcia (hereinafter referred to as Claimant) was unjustly dismissed from the Carrier's service on January 29, 1969.

2. That accordingly, the Carrier be ordered to compensate Claimant for all time lost from date of dismissal, January 29, 1969, to date of restoration to service, May 10, 1969.

EMPLOYEES' STATEMENT OF FACTS: The Carrier first employed claimant as a laborer on February 24, 1964 at its Los Angeles Diesel Shop. On July 11, 1966, claimant's employment classification was changed to that of a machinist helper, and on April 3, 1968, the date of alleged rules violation, his daily hours of assignment, excluding rest days, were 3:00 P. M. to 11:00 P. M.

On January 6, 1969, claimant was notified to appear for a formal hearing in the office of the general foreman on January 14, 1969, to answer charge of alleged failure to promptly report a personal injury which he assertedly sustained at approximately 7:00 P. M., April 3, 1968 while attempting to remove a journal box oil plug from a diesel locomotive unit at the Los Angeles Diesel Shop.

At the request of the local committee, the formal hearing was rescheduled and held January 21, 1969. The carrier dismissed claimant from its service on January 29, 1969.

The carrier on April 29, 1969, agreed to restore claimant to service promptly with seniority and service rights unimpaired, with an understanding furthermore that the matter of compensation for time lost could be progressed by the organization to the Adjustment Board for a determination thereof.

The organization's handling of this case has been in accordance with terms of the current controlling agreement, up to and with the highest carrier officer

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.

While working as a machinist helper on or about April 3, 1968, the Claimant suffered a minor injury when his wrench slipped and hit his right temple. The skin was not broken. Claimant states that he reported the injury orally to his foreman, but resumed work without filing a written report, as required by Rule M of the General Rules and Regulations, which reads in part as follows:

". . . Each personal injury suffered by an employe, no matter how trivial; . . . must be reported without delay to his immediate superior; and written report completely and correctly made. . . ."

The Carrier denies that any report of the injury was made at that time. A small growth gradually developed on claimant's head. He therefore visited the clinic maintained by the Parties several times from June 13 to October 7. On November 27 he took a day off from work to have the cyst removed by minor surgery. On the previous day he had his foreman make out a written report on the injury of April 3. He was charged with violation of Rule M. Hearing was held on the property on January 21, 1969. Claimant was dismissed on January 29 and reinstated on April 30.

In our opinion, study of the record of the hearing on the property clearly sustains the conclusion that Claimant did fail to report the injury at the time of the occurrence and did violate Rule M as charged.

In view of the minor character of the accident and the real basis for doubt at that time that an injury had been sustained, the penalty of dis-

charge is deemed to be grossly excessive, and therefore arbitrary and unreasonable. We conclude that a reasonable penalty would be suspension for no more than thirty days.

AWARD

Claimant shall be considered as suspended for thirty days as of January 29, 1969, and reinstated with seniority rights unimpaired as of February 28, 1969. He shall be compensated for the wage loss, if any, from the latter date until April 30, 1969.

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.