

**Award No. 6186
Docket No. 6066
2-SP(PL)-CM-'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, AFL-CIO (Carmen)**

**SOUTHERN PACIFIC LINES
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector T. H. Mack (hereinafter referred to as the Claimant), was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of September 10, 1969 after 20 years service with the Carrier.

2. That the Carrier be ordered to:

- (a) Restore the aforementioned Claimant to service with all seniority rights unimpaired, and be compensated for all time lost retroactive to August 17, 1969 when he was removed from service pending hearing and subsequently dismissed on September 10, 1969.
- (b) Claimant be granted all vacation rights.
- (c) Carrier assume and pay all premiums for hospital, surgical and medical benefits, including all costs for life insurance.
- (d) Carrier pay into the Railroad Retirement Fund the maximum amount that is required to be paid an active employe for all time he is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector T. H. Mack (hereinafter referred to as the claimant), was employed by the Southern Pacific Transportation Company (hereinafter referred to as the carrier), and at the time of dismissal had 20 years service with the carrier at Los Angeles, California.

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.

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

All data herein submitted have been presented to the duly authorized representative of the petitioner and were made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the petitioner in this case, to make such further answers as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

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.

The Board finds that the record makes abundantly evident that the Claimant committed a violation of Rule "G."

While the above misconduct constituted just grounds to discipline the Claimant, the Board is persuaded, that in view of the Claimant's unblemished employment record of 20 years, that discharge was excessive, and is therefore ordering reinstatement of Claimant to service forthwith, with all rights restored.

AWARD

Claimant reinstated, in accordance with above findings, with seniority and other contractual rights unimpaired, but without compensation for lost time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October, 1971.

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