



Award No. 6268

Docket No. 6071

2-SPT(PL)-MA-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current Agreement, Machinist Lewis L. Larsuel (hereinafter referred to as Claimant) was unjustly dismissed from the Carrier's service on November 19, 1969.

2 — That accordingly, the Carrier be ordered to compensate Claimant for all time lost from date of dismissal, November 19, 1969 to date of restoration to service, March 25, 1970.

EMPLOYEES' STATEMENT OF FACTS: Claimant was employed by the Carrier at its Los Angeles Diesel Shop on July 29, 1965. Claimant's employment classification with the Carrier was as a Machinist, and on September 25, 1969, the date of the alleged rules violation his daily hours of assignment, excluding rest days, were 3:00 P.M. to 11:00 P.M. At the time of his dismissal from service on November 19, 1969, Claimant had accumulated four and one-half (4½) years of faithful service with the Carrier.

On Thursday, September 25, 1969, Claimant performed service on his assigned shift from 3:00 P.M. to 11:00 P.M. On above date and shift Claimant was assigned to work on tracks 4, 5 and 6 in the Carrier's Diesel Shop performing work of adjusting brakes and changing brake shoes.

Upon reporting for duty at 3:00 P.M. September 25, 1969, Claimant was notified by the Machinist Committeeman that he had been displaced from his position by a senior Machinist. Claimant then accompanied the Committeeman to the Diesel Shop office to look at the job list to determine what open assignments there were available or what junior Machinist's position he could displace.

At approximately 4:00 P.M. on September 25, 1969, Claimant was assigned to the job of working brakes, by Carrier's General Foreman Dausses, on

the reason in the world why carrier would be vexed with his delinquencies of September 25, 1969 that led, following a hearing, to the dismissal on October 10, 1969 which the Board should again note was but for a period of a little more than two months when his reinstatement was accepted on a leniency basis by the local chairman of the Petitioning Organization.

Carrier submits that the claim before the Board in this instance has no merit at all. It is urged to concur with this judgment and deny the relief that has been requested.

While in no way admitting that the dismissal of claimant was not justified and proper, the carrier requests that, in the event the Board should find otherwise and sustain the claim insofar as the request for compensation is concerned, it 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 Awards 2523 and 2653.

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 Claimant was dismissed from service on November 19, 1969, and restored to service on March 25, 1970. The Employees contend that Carrier's action was unjust and there is no evidence of Carrier having committed a Rule violation.

The Carrier moves to dismiss the claim for the reason that there is no issue not already resolved by negotiation between the parties. On December 18, 1969, the Claimant's representative accepted the Master Mechanic's offer to reinstate the Claimant on a leniency basis.

Second Division N.R.A.B. Award 6235 involved the same parties. Award 6235 states:

"* * * The earlier resolution of this issue urges us to dismiss the instant case.

Furthermore, an examination of the submission reveals substantial evidence to prove the charge. The record does not disclose any viola-

tion relative to the investigation and the discipline imposed. The penalty assessed, under all the circumstances is not arbitrary or unreasonable."

We will sustain Carrier's motion and dismiss the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1972.