Award No. 6281
Docket No. 6123
2-SPT(PL)-EW-'72

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 (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement, Mechanical Department Electrician R. F. D'Antonio was unjustly treated when he was suspended from service on May 15, 1970, pending investigation, and dismissed from service on June 5, 1970, following investigation, for alleged violation of Rule 801 of the Southern Pacific Transportation Companies General Rules and Regulations on May 15, 1970.

2. That accordingly, the Carrier be ordered to:

(a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.

(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 R. F. D'Antonio, hereinafter referred to as the claimant, was regularly employed by the Southern Pacific Transportation Company (Pacific Lines), hereinafter referred to as the Carrier, and regularly assigned, prior to May 15, 1970, as an electrician under the supervision of W. W. Atkinson, Master Mechanic, Los Angeles Division, with headquarters at Los Angeles, California.

On May 15, 1970, at approximately 6:00 A. M., claimant was assigned by his foreman, Mr. John Edward Cox, to perform an R-1 inspection on diesel locomotive No. 8620 located on the east end of track 5, service track, Taylor Diesel Facility, Los Angeles, California.

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 which cover the practice on this property.

With regard to Claim 2(a), that part requesting "payment of 6% interest added thereto," the above-noted rule of the current agreement makes no provision for such payment and it cannot, therefore, be allowed.

With regard to Claim 2(b); i.e., reinstate all vacation rights for the aforesaid employe, the current Vacation Agreement between the parties controls and petitioner has presented no facts or contentions that there is any dispute in this regard.

With respect to Claim 2(c); i.e., 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, such matters are also the subject of agreements between the parties with no evidence of any dispute as to interpretation or administration. Therefore, unless the petitioner can show a contract provision supporting the above-noted claim, it is not properly before the Board and should be dismissed.

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.

Claimant was specifically charged with a violation of the Agreement given a hearing at which he was afforded through his duly selected representatives an opportunity to confront his accuser, subject him to cross examination and present on his own behalf any and all evidence material and relevant to the charge. He was found guilty and dismissed from the service of the Carrier.

As in all discipline cases, we look to the transcript of hearing itself to determine whether or not, in the light of due process, the rights of the accused have been fully protected. The evidence in this case, that is, direct evidence of the offense with which charged, consists of the victim Supervisor's testimony giving one version of what transpired, and the Claimant's testimony giving a completely different version of what transpired. The hearing officer apparently believed the Supervisor's testimony. We find nothing of due process in this,

since the hearing officer obviously was present and able to observe the conduct and demeanor of both opposing witnesses. Because he gave more credence to one in preference to the other does not constitute grounds for reversal of his decision. The sole question for determination is whether there was substantial evidence presented at the hearing which would justify the finding of guilty. The testimonial of Supervisor Cox when considered in connection with the examining Doctor's report, constitutes a sufficient body of evidence to warrant the decision rendered.

The Organization objects to the Carrier's submission alleging that Carrier listed past incidents of misconduct on the part of claimant, none of which were discussed with them on the property. They contend that this is a violation of Circular No. 1 and Circular A of this Board. In their rebuttal however, the Organization states as follows:

> "Proof positive of the Carriers' failure to prove that Claimant is guilty as charged is further verified by their including data in their submission that was not reviewed on the property during the handling of this dispute, other than a brief comment that the Carrier was not satisfied with claimant's past performance."

Thus it would appear that the subject of past performance was reviewed on the property although briefly. There is no evidence to remotely suggest that evidence of the character of the accused, as shown by past performance, was considered by the hearing officer to determine the guilt or innocence of the accused. It is always a proper subject to consideration in the assessment of discipline. We do not find the arguments of the organization in this regard to be persuasive. Hence we find no violation of Circular A of this Board.

For the foregoing reasons, we will deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 28th day of March 1972.

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