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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6448
Docket No. 6265
2-SPT(PL)-EW-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: { System Federation No. 114, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electrical Workers)
 { Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Maintenance of Way Department Electrician James T. Estes was unjustly treated when he was dismissed from service on March 31, 1971, following investigation, for alleged violation of Rule 801 of the General Rules and Regulations of the Maintenance of Way and Structures, of the Southern Pacific Transportation Company on December 14, 1970.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employee to service, with all service and seniority rights unimpaired and compensate him for all time lost.
 - (b) Reinstate all vacation rights for the aforesaid employee.
 - (c) Pay Southern Pacific Employees Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employee is held out of service.

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 admitted taking time off from work for personal business without securing permission from his superiors or even notifying same of the need to do so. He had adequate notice of being obligated to appear as a witness in a law suit unrelated to his employment and had sufficient opportunity to advise his supervisor thereof. He admittedly gave false information that he was on duty, when in fact he was not, and accepted payment for the time he was not at work.

Petitioner alleges that there was an accepted practice for employees headquartered at outlying points to trade time for time. This was not supported by any probative proof. In addition no evidence was submitted that claimant, subsequent to the admittedly improper conduct, did in fact make up the time he took off, although he remained in Carrier's employ for three months before his offense was discovered.

By Petitioner's own statement "trading of time is a violation of the controlling agreement and not condoned by the employees labor organization ...". Carrier denied that the practice exists.

This Board has repeatedly refused to interfere with the determination of employers as to discipline assessed for proven infractions unless same is clearly excessive and unreasonable. The record herein does not afford an affirmative finding.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1973.