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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6479
Docket No. 6329
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 Employee:

1. That under the current Agreement, Mechanical Department Electrician C. W. Jones was unjustly treated when he was dismissed from service on May 13, 1971, following investigation for alleged violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company on April 2, 1971.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employee to service, with all service, seniority rights and vacation rights unimpaired and compensate him for all time lost with payment of 6% interest added thereto.
 - (b) Make payment of all hospital, medical, life insurance and Railroad Retirement contributions 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.

The authority of this Board, as set forth in the Railway Labor Act is extensively confined. We are limited to review the record put before us; ascertain whether the terms of the Controlling Agreement between the parties had been complied with, and, in cases involving disciplinary action taken against an employe, determine whether Claimant was afforded a fair hearing and that the penalty assessed was not arbitrary, capricious, or unreasonable.

There is no material disagreement between Petitioner and Carrier as to the facts involved in an incident which occurred on April 2, 1971. Claimant, who had been in Carrier's employ two and one-half months, undeniably was a participant in an altercation with a fellow employe shortly after commencement of his work shift. Even if we were to give credence to the valiant effort on Petitioner's part to endeavor to excuse Claimant's unquestionably reprehensible conduct on the alleged ground that he was provoked, we cannot conceivably overlook the admitted fact that Claimant had on his person a lethal weapon which he brought into play during the course of the affray.

Based upon the record before us, it cannot be held that termination of the Claimant was arbitrary, capricious, or unreasonable. We have stated in innumerable Awards that we are not empowered to entertain any plea for leniency. This is solely in the discretion of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen

Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.