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(Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6526
Docket No. 6399
2-HB&T-CM-'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That Car Inspector J. E. McCain, who was not afforded a fair and impartial investigation as provided for in Rule 29 of the agreement, was unjustly dismissed from the service of the Houston Belt & Terminal Railway Company effective July 16, 1972.
2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Car Inspector McCain as follows:
 - (a) Eight hours (8') per day at pro rata rate, five (5) days per week, beginning July 16, 1972;
 - (b) Returned to service with seniority rights unimpaired;
 - (c) Made whole for all vacation rights;
 - (d) Made whole for all health and welfare and insurance benefits;
 - (e) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance;
 - (f) Made whole for any other benefits that he would have earned during the time he was 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 employee or employees involved in this dispute are respectively carrier and employee 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.

By written notice dated March 24, 1972, Carrier notified Claimant that a formal investigation would be held,

"to develop facts and place responsibility, if any, in connection with the charge that you have been gainfully employed by Harris County since on or about April 16, 1954, and that you have been employed both by Harris County and the Houston Belt & Terminal RY Company since on or about August 16, 1957, and to review your past work record."

The investigation was held and Claimant found guilty and dismissed from service. At no time did the Claimant deny holding the position with Harris County.

The central issue in this case is the determination of the alleged wrong committed by the Claimant. We have examined the record carefully and are unable to make that determination. We have not been shown that the holding of a second job was in violation of Claimant's employment contract or any of the work rules of the Carrier. Further, the record does not show that there was a conflict in those jobs that was reflected in the work record of the Claimant. The absences alluded to by the Carrier could be grounds for disciplinary action if they were not taken through proper procedure. This was neither alleged nor proved.

We find that Claimant's dismissal was without proper foundation and direct that Claimant be offered his former position with his seniority rights intact and that he be compensated for the period of his dismissal commencing July 16, 1972, at his pro rata rate.

A W A R D

Claim sustained in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.