

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That Carman Vidal Vela, Harlingen, Texas, was unjustly dealt with by the Missouri Pacific Railroad Company when he was withheld from service starting October 22, 1972, and following investigation dismissed from service effective November 1, 1972.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Vela as follows:
 - a. Eight hours (8') per day at straight time rate, five (5) days per week, beginning October 22, 1972, until returned to service July 9, 1973;
 - b. Retain 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.

Claimant was charged with insubordination as a result of his alleged refusal to remain in the presence of two superiors to receive further instructions relative to the filling a sand tower.

After hearing and investigation Claimant was dismissed from Carrier's service. After 37 weeks, Carrier restored Claimant to service because, according to Carrier, Claimant had a good record and it did not want to hire a new man to replace him. Claimant was restored without pay for time lost, and that is now the basis for this claim.

An examination of the record, including the hearing transcript, reveals that there was evidence of some insubordination. However, the nature and degree of the insubordination, under the circumstances, were not sufficient to warrant dismissal or a 37 week suspension. Accordingly, the Board will reduce the suspension to 120 days, and Claimant's recovery shall be limited to that which is provided in Rule 32(d).

A W A R D

Claim disposed of per findings herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of August, 1975.