

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. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(St. Louis-San Francisco Railway Company

Dispute: Claim of Employee:

- (a) The Claimant was alleged to have been insubordinate against his local supervisor and the General Car Foreman in the performance of his duties and is charged with violation of general rule B and C of the Rules, Regulations, Safety Rules and Instructions, Governing Mechanical Department Employees, effective March 1, 1957, and attempting to make restitution to the Carrier by not being excessive in his claim for reinstatement, the punishment of permanent dismissal is too severe and unjustified.
- (b) It is the desire of the employee to be reinstated with his assurance that such rule violations would not occur in the future.

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 dismissed from Carrier's service after being charged and found guilty of insubordination.

The claim made herein is based solely on a leniency request.

It has been uniformly held in all Divisions of this Board that we have no jurisdiction to consider leniency requests. In Second Division Award No. 2787, the Board said:

"... We are not the triers of the facts. Our duty is to establish only that a fair hearing required by the rules has been given and not to substitute our judgement for those who have had a direct and immediate opportunity to evaluate the witnesses and their evidence. Thus leniency is a prerogative which is not available to this Division, much as we might desire to recognize the personal qualities, family problems, veteran status or union affiliation of any grievant." (See also Awards 3828, 3894, 5345.)

A W A R D

Claim denied.

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 5th day of April, 1977.