

The Second Division consisted of the regular members and in addition Referee Rolf Valtin when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler, Jose M. Madrid, was unjustly suspended on August 27, 1976 and dismissed from the service of the Carrier, on September 13, 1976.
2. That accordingly, the Carrier be ordered to:
 - (a) Compensate him for all time lost and with payment of 6% interest added thereof.
 - (b) Reinstate all vacation rights to the aforesaid employee.
 - (c) Pay employee's group medical insurance contributions, including group medical disability, dependents' hospital, surgical and medical and death benefits premiums for all the time that the aforesaid employee 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 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 claimant, a Laborer with about seven years of service with the Carrier at the time of his discharge, was discharged for his involvement in a physical altercation with another employe. The other employe was also discharged. The incident occurred on August 27, 1976. Both men were restored to service about four months later.

We view the evidence as clear that a fight of rather vicious proportions took place and that neither of the two combatants can legitimately claim to have been a mere innocent victim. On this assessment of the evidence, we can hardly declare the penalty which is now before us -- i.e., a disciplinary suspension of about four months' duration -- an excessive penalty.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of July, 1978.