

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { International Association of Machinists
and Aerospace Workers
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rule 32, when they unjustly dismissed Machinist C. C. Jones from service on March 30, 1977 for allegedly leaving his assignment at approximately 8:00 p.m., February 13, 1977, without proper authority and being absent from his assignment since that date without proper authority.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist C. C. Jones at the pro rata rate of pay for each work day beginning March 30, 1977 until he is reinstated to service. In addition, he shall receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.
3. Claim is also made for Machinist C. C. Jones's actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance.
4. In addition to the money claimed herein, the Carrier shall pay Machinist C. C. Jones an additional sum of 6% per annum compounded annually on the anniversary date of said claim in addition to any other wages earned elsewhere in order that he be made whole.

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.

In Award 8250, the Board found that due to a procedural error committed by the Carrier in handling the initial claim of Machinist C. C. Jones, who had been dismissed from service for allegedly leaving his assignment without proper authority and for continuing to be absent from his assignment without proper

authority, Carrier had breached the controlling agreement and accordingly was liable for the payment of any financial loss suffered by the Claimant as a result of Carrier's action. In so finding, we remanded back to the parties the task of determining the proper monetary sum due the Claimant with the stipulation that if the parties were unable to mutually resolve the issue, the matter would revert back to the Board for final determination. Through subsequent written correspondence to the Board, the parties acknowledged that following several attempts to resolve the matter, they were unable to arrive at a mutually agreeable settlement and therefore requested the Board, in accordance with its ruling in Award 8250, to make a final determination.

Based on calculations it initially made subsequent adjustments to those figures as a result of information proffered by the Organization, and further taking into account various deductions it deemed proper, the Carrier's final position as to the proper monetary sum due the Claimant before the payment taxes, was the amount of \$12,174.85. The Organization on the other hand, takes exception to all the deductions but one and submits the Claimant is entitled to the grand monetary sum of \$23,039.54 before taxes.

Upon a review of Award No. 8250 and all the additional evidence of record proffered to the Board by the parties, we make the following findings:

1. In subjecting Award No. 8250 to close scrutiny, we have uncovered an error, most likely attributable to typing, in the first sentence of point 3 on page 3. The word agree, in the second line of the sentence should have read disagree. It can readily be ascertained that the word agree is grammatically inconsistent with the use of the word but preceeding it. If the word agree had been the intended term, then the but would have been the conjunction and. In context with the first point wherein the Board specifically noted the Claimant's previous attendance record was far from exemplary, the Board intended this to be a factor in the calculation of the proper monetary sum due the Claimant and therefore the first sentence of point 3 should have read as follows:

"With regard to point 2 above, the Board agrees there has been a breach of contract but must disagree with the position of the Organization that Carrier must accept the full financial responsibility for this breach."

2. In analyzing the calculations made by Carrier and taking into account what was originally intended by us but unfortunately was not accurately conveyed in Award 8250, we are satisfied Carrier has adhered to the appropriate guidelines set forth by us and taken into account the appropriate considerations at arriving at a monetary sum proper for purposes of compensating the Claimant for the financial loss suffered by him as a result of Carrier's action.

A W A R D

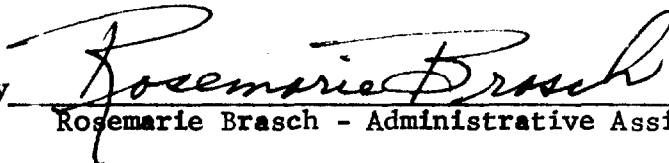
Upon remand of the subject impasse by the parties to the Board we find the Claimant is entitled to receive as compensation for the financial loss suffered by him as a result of Carrier's action, the sum of \$12,174.85.

Claim sustained to the extent set forth in the findings.

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 28th day of October, 1981.