

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8835
Docket No. 8753
2-SPT-FO-'81

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

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That in violation of the current agreement Firemen and Oiler Edward J. Silva, was unjustly suspended on December 18, 1978, and dismissed from the service of the Carrier; following a hearing held on February 7, 1979.
2. That accordingly the Carrier be ordered to make the aforementioned E. J. Silva whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages.
3. In addition to money claimed herein the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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 Board has carefully reviewed the entire appeals record and finds that the investigative trial held on February 7, 1979 fully comported with the essential requirements of administrative due process and that the evidence developed at the proceeding supported the charges delineated in the December 21, 1978 Notice of Investigation.

In particular, the testimony provided by the three Carrier officials who witnessed Claimant's indecorous behavior on December 18, 1978 pointedly shows that he was insubordinate, intoxicated, belligerent, disrespectful of authority and his employment application, dated October 9, 1974, which we have examined indicates that he purposely falsified this document when asked about prior

criminal convictions. In fact, Claimant acknowledged at the hearing that he falsified this portion of the application. There were no extenuating circumstances that would plausibly explain his behavior or any indication that Carrier abused its discretionary prerogatives when it dismissed him.

Moreover, when we consider the disruptive impact such conduct could have on rail operations, it is indeed fortunate that no mishap occurred. The railroad industry, by definition, is vested with a vital public interest responsibility and it would ill behoove Carrier to retain in its employe a person who lies and disregards supervisory admonitions and commands. We will deny the claim.

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 9th day of December, 1981.