

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

Parties to Dispute: (Sheet Metal Workers International Association
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That claimant be restored to service with all seniority rights unimpaired.
- (2) Compensate claimant for all time lost in addition to an amount of 10% per annum compounded annually on the anniversary date of claim.
- (3) Make claimant whole for all vacation rights.
- (4) Pay the premiums for hospital, surgical and medical benefits for all time claimant held out of service.
- (5) Pay the premium for Group Life Insurance for all time claimant held out of service.
- (6) Pay claimant for all contractual holidays.
- (7) Pay claimant for all contractual sick pay.
- (8) Pay claimant for all insurance premiums.

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 employes 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.

On March 2, 1982, the Carrier held an investigation pursuant to proper notice to determine if Claimant had falsified a report of an accident.

Subsequent to the investigation, the Employe was notified that he had been found guilty of violating one part of a Carrier's rule, regarding dishonesty, and he was dismissed from the service.

The key issue in this dispute is whether the Claimant had an ear problem as a result of a work incident. A number of possible causes are cited as to how it could have occurred while he was in a duty status. However, the Carrier found evidence in the hearing record to lead it to a conclusion that the Claimant was dishonest "in reporting an injury that could not have happened in the manner reported".

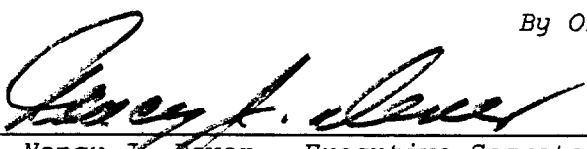
The Board has thoroughly reviewed the entire record and considered the many difficult issues raised therein. We find, given the facts and circumstances of evidence, that permanent dismissal is an overly severe penalty. The time that Claimant has been out of service should constitute sufficient discipline. Accordingly, the claim is sustained to the extent that the Claimant will be restored to the service, with seniority rights unimpaired, but without compensation for time lost while out of service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.