

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22556
Docket Number CL-22612

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8588) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it dismissed employe R. A. Dupree from service; and,

(b) The Southern Pacific Transportation Company shall now be required to compensate Mr. R. A. Dupree one day's pay at the rate of Industrial Clerk Position No. 10, \$55.19 per day, October 21, 1977 and each date thereafter until April 3, 1978, the day and date he was reinstated with seniority unimpaired.

OPINION OF BOARD: Claimant, assigned as industrial clerk on Carrier's Los Angeles Division, entered the Carrier's service as a clerk on September 21, 1965. He was removed from service on October 21, 1977, for allegedly refusing to drive a certain designated Carrier vehicle for the purpose of picking up an interchange list. On the same date claimant was notified to attend an investigation, scheduled for 9:00 A.M., October 27, 1977. After a lengthy investigation on October 27 and October 28, 1977, claimant was dismissed from service on November 7, 1977. He was reinstated with seniority rights unimpaired on April 3, 1978. The claim before the Board is for pay for time lost while out of service.

The Board has carefully reviewed the lengthy transcript of the investigation, as well as the submission of the parties. The claimant contended throughout that the car involved, a leased 1975 tan Nova, was not safe to drive and that he had notified his supervisors to that effect. The transcript also contains substantial evidence

that other clerks, who had driven the car involved, considered it unsafe and had so reported to their supervisors, including the Trainmaster who removed claimant from the service. One clerk testified that he had driven the car on October 19 and 20, and on October 20 when he had to apply pressure to the brake "the front brake grabbed," causing the car to swerve into oncoming traffic and an accident was barely averted.

There is no evidence that the car was tested by an expert mechanic before the Trainmaster insisted on claimant driving it at about 10:25 A.M., October 21, 1977, and removed claimant from the service because he would not drive it. The record does show that on October 23, 1977, two days after the occurrence here involved, while being driven by a conductor, the car severed a tie rod when it hit a rut in the road.

The record shows that the car had been driven approximately 60,000 miles; that vehicles are ordinarily replaced by the leasing company in the mileage range of 55,000 to 60,000 miles; and that a replacement had been ordered in March 1977, but, through some mistake, the order was not put through.

The Board does not condone insubordination on the part of any employee. Neither will it support a Carrier requiring an employee to perform a service when a real safety hazard may be involved. It is our considered opinion that, with the complaints that had been received as to the car being unsafe, the Carrier would at least have had it checked by an expert mechanic before insisting upon the claimant driving it, especially when the record shows that claimant could have been assigned another vehicle to drive.

Based on the entire record, the Board concludes that the Trainmaster precipitously suspended claimant from service about 10:25 A.M., October 21, 1977, which, from the evidence, was not accomplished in a very calm manner. We also conclude that claimant's subsequent dismissal from the service was improper, and that claimant is entitled to be compensated for time out of service in accordance with Rule 52 of the applicable agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds;

That the parties waived oral hearing;

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That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 to AWARD NO. 22556

DOCKET NO. CL-22612

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Southern Pacific Transportation Company
(Pacific Lines)

Upon application of the representatives of the employee involved in the above award, that this Board interpret the same in light of the dispute between the parties as to the meaning and application, as provided in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made.

On October 16, 1979, this Division issued its Award No. 22556 in dispute between the parties, in which the claim of the employees read:

"(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it dismissed employee R. A. Dupree from service; and

(b) The Southern Pacific Transportation Company shall now be required to compensate Mr. R. A. Dupree one day's pay at the rate of Industrial Clerk Position No. 10, \$55.19 per day, October 21, 1977 and each date thereafter until April 3, 1978, the day and date he was reinstated with seniority unimpaired."

We sustained the claim, with the following language:

"Based on the entire record, the Board concludes that the Trainmaster precipitously suspended claimant from service about 10:25 A.M., October 21, 1977, which, from the evidence, was not accomplished in a very calm manner. We also conclude that claimant's subsequent dismissal from the service was improper, and that claimant is entitled to be compensated for time out of service in accordance with Rule 52 of the applicable agreement."

Rule 52 of the applicable agreement, referred to in the award pertained to the method of computing pay "If the final decision decrees that charges against the employee were not sustained..."

The question at issue in the request for interpretation pertains to vacation or pay in lieu thereof during the year 1978.

It is well settled that the purpose of an interpretation is to explain the Award as originally made and not to make a new Award or consider issues that were not before the Board when the Award was issued.

When Award No. 22556 was issued there was no question before the Board concerning vacation or pay in lieu thereof for claimant in 1978, and such issue may not properly be passed upon through the guise of an interpretation. The request for an interpretation will, therefore, be dismissed.

Referee Paul C. Carter, who sat with the Division as a neutral member when Award No. 22556 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.

