

Award No. 8
Docket No. 8

SPECIAL BOARD OF ADJUSTMENT NO. 166

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of
- Railway and Steamship Clerks, Freight Handlers, Express
and Station Employees on the Missouri Pacific Railroad, that the Carrier vio-
lated the Clerks' Agreement:

1. When, on October 25, 1955, it held Joseph M. Jadow, Telephone Operator-Janitor, Assistant Superintendent's Office, Nevada, Missouri, out of service, and, following investigation held at Nevada on October 26, 1955, unjustly dismissed employe Jadow from the service of the Carrier, and failed and refused and continued to refuse to reinstate Jadow to the service with seniority rights unimpaired and to reimburse him for wage loss suffered until Tuesday, April 17, 1956, when it did reinstate Jadow to the service with seniority rights unimpaired, but without pay for wage loss;
2. Carrier shall be required to compensate Claimant Jadow for all wage loss suffered beginning October 25, 1955 until he was restored to service effective Tuesday, April 17, 1956, account Jadow having been harshly treated and unjustly discharged as result of charges against him that were not sustained by the Carrier;
3. That Joseph M. Jadow shall be paid for the ten days' vacation that was due him and which he was scheduled to enjoy beginning Thursday, November 10, 1955, until and inclusive of Wednesday, November 23, 1955, but which he did not receive because of being dismissed from service, held out of service, commencing October 25, 1955.

FINDINGS: Claimant was assigned to work 7:00 a.m. to 4:00 p.m. with lunch hour 12:00 to 1:00 p.m. on October 25, 1955. He did not appear for work until 12:40 p.m. At an investigation held thereon, he testified that he had a stomach disturbance starting at 2:00 a.m., was alone at home, and had no telephone facilities to contact the Carrier. He was dismissed.

It is perfectly obvious that claimant did not fulfill his responsibilities as an employe of the Carrier when he made no effort whatever to contact the Carrier in connection with his inability to fulfill his assignment. However, it appears that he had been in service for 10 years and had never reported late to work before. There is no evidence of any other prior misconduct. Accordingly, it appears that discharge was an unduly excessive penalty.

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It appears that on November 2, 1955, the Organization offered to waive claim for pay if he was reinstated. That offer was not accepted, but the Carrier official suggested that a request be made for reinstatement on a leniency basis. The Organization did not accept that proposal. Claimant was actually restored to employment on April 17, 1956. It appears that six months out of service is an inappropriate penalty for the misconduct and, since both of the parties must bear some responsibility for the failure to reinstate him sooner, it appears appropriate to award him pay for one half of the time lost less earnings in other employment during the same period.

AWARD: Claimant shall be compensated for one half of the time lost from October 25, 1955, until his reinstatement on April 17, 1956, less any earnings in other employment during the last half of such period.

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/s/ Dudley E. Whiting
Dudley E. Whiting - Chairman

/s/ Ira F. Thomas
Ira F. Thomas - Employee Member

/s/ G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
January 16, 1957

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INTERPRETATION

SPECIAL BOARD OF ADJUSTMENT NO. 166

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
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versus
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In rendering the Award on the above matter on January 16, 1957, it was the intention of the Board that the claimant should be considered upon a disciplinary suspension without pay for one-half of the time from October 25, 1955 to April 17, 1956. In other words, he should be considered suspended without pay from October 25, 1955, to January 20, 1956, inclusive. It was further the intention of the Board that for the remainder of the period, January 21, 1956, to April 16, 1956, inclusive, he should be paid for his wage loss less any earnings in other employment during that period. It appears that he received unemployment benefits through the Railroad Retirement Board and that his obligation to repay the same should be limited to the period January 21 to April 16, 1956.

SPECIAL BOARD OF ADJUSTMENT NO. 166

/s/ Dudley E. Whiting
Dudley E. Whiting - Chairman

/s/ Ira F. Thomas
I. F. Thomas - Employee Member

/s/ G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
April 11, 1957