

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Machinists)
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employee:

- 1 - That under the current Agreement, Machinist J. S. Solis (hereinafter referred to as Claimant) was unjustly removed from the Carrier's service on July 15, 1971 and subsequently dismissed on August 20, 1971.
- 2 - That accordingly the Carrier be ordered to compensate Claimant for all time lost from date of suspension, July 15, 1971 to date of restoration to service on September 12, 1971.

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.

Claimant was taken out of service for alleged insubordination, discharged following a hearing, and restored to service without compensation for wages lost during the processing of his claim on the property.

Safety on the job has been the subject of great concern on the part of organizations representing employes and employers generally, in recent years. Extensive efforts by our government have been undertaken in this direction. Managements and supervisors have been urged to secure compliance with necessary and proper safety rules. On the night in question, claimant was observed committing an act contrary to the best interests of his fellow workers and himself. Shortly thereafter his supervisor alerted him to his error. There is a conflict in testimony as to whether claimant was given a direct order to rectify the unsafe condition created by his conduct. Nevertheless, it would appear that he should not have missed the implication of the discussions between his foreman and himself and he should have drawn the conclusion that he was expected to act promptly to effectuate the safety conditions and bring himself into compliance with the safety rules recited to him.

Carrier recognized that imposing the extreme penalty of industrial life was not warranted in this case. However, this should have been clear to management immediately at the conclusion of the hearing on the charges. Excessive penalty is inconsistent with the purposes of punishment which essentially is to accomplish correction, not retribution. This would have been duly satisfied had claimant been restored to service at the end of the strike on August 2, 1971 with the period between his being taken out of service and July 23, 1971 constituting a suspension for poor safety practices.

Although we do not generally interfere with Carrier's discretion in matters of discipline in the absence of a clear showing that the action taken was arbitrary, capricious, or unreasonable, we have reserved the right to rectify the assessment of a penalty obviously excessive. A one week's suspension was all that can be found appropriate on the basis of this record and claimant should be compensated for wages he would have earned during the period August 2, 1971 and September 12, 1971, less any earnings he might have had during that period from employment elsewhere.

A W A R D

Claim sustained to the extent set forth in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.