Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8527
Docket No. 8561
2-CR-MA-'80

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That Machinist J. P. Campbell was suspended for sixty (60) days.

2. That, accordingly, Machinist J. P. Campbell's record be cleared and he be compensated for each and every day he was suspended.

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, a machinist in Altoona, Pennsylvania, was suspended for 60 days for being away from his assigned position between 3:20 and 3:30 p.m. on April 26, 1978. The claimant was given timely notice of the charge and a fair trial.

The basic facts are undisputed. Between 3:20 p.m. and 3:30 p.m. the claimant left his work area to attend a union election. Due to the unusually long lines at the election, he returned to his work area without voting. Claimant admits he was gone for five or ten minutes and acknowledges that he did not receive permission before leaving his assigned work area.

The employe's major defense is that he had to wait for the crane crew to set up his work and, thus, since he could not commence work, this was the most expeditious time to participate in the union vote. Furthermore, he did not know how to seek permission because his foreman did not arrive until 3:30 p.m. The organization urges us to award the claimant all wages he lost during the suspension and that he should only be docked for the ten minutes he was away from work. Assuming the charges are substantial, the organization contends the penalty is excessive and arbitrary. The carrier argues that there is simply no excuse for the claimant's failure to obtain permission before leaving his work area. According to the carrier, the penalty is appropriate in light of the claimant's poor prior work record.

The record clearly manifests, by the claimant's admissions and his foreman's testimony, that he left his work area for ten minutes on April 26, 1978. The record also indicates that the claimant's foreman was willing to accomodate the claimant by giving him permission to go vote, if only the claimant had requested such permission. The carrier rightfully expects the claimant to remain at his assigned work area, regardless of whether or not his work is ready, unless he first procures proper authorization to leave his work area. Second Division Award No. 6448 (Shapiro). The burden shifts to the claimant to demonstrate he was unavoidably prevented from requesting permission from his foreman. Second Division Award No. 6710 (Dolnick). Here, the claimant knew his foreman would arrive at 3:30 p.m. and he could have easily asked the foreman if he could take a shoft absence so he could vote.

We now turn to the issue of whether the sixty day suspension was commensurate with the proven offense. This Board will not upset the carrier's judgment in assessing the penalty unless the punishment is excessive, arbitrary or an abuse of discretion. Third Division Award No. 20032 (Eischen). The carrier may properly weigh the claimant's work history to determine the degree of discipline. Second Division Award No. 6632 (Yagoda). The carrier's assessment of discipline, dated September 13, 1978, indicates the carrier relied heavily on the claimant's unfavorable work history.

Upon careful analysis of the claimant's employment record, we conclude the penalty imposed on the claimant was arbitrary and unduly harsh when measured against a ten minute unauthorized absence. First, we must disregard the charges leveled against the claimant on May 11, 1978 (for reading a newspaper and failure to perform work). Those charges are being considered by this Board in a separate and distinct case. Though claimant's record is not good, he has been charged with only two offenses since he was reinstated four and one half years before this controversy. While the claimant is not a model employe, the penalty must be reasonably proportionate to the seriousness of the offense he committed. A relatively minor ten minute absence even with his tainted work record hardly justifies a sixty day suspension. We rule that given the nature of the offense and the claimant's prior work record, the maximum penalty, within the realm of reason, would be a thirty day suspension. Thirty days should sufficiently impress upon the claimant both his obligation to remain at his work area and to improve his general work habits. Accordingly, the claimant is awarded thirty days of pay at the rate in effect during the time he served the second thirty days of his sixty day suspension less any earnings he received from other employment during that period.

A W A R D

Claim sustained but only to the extent consistent with our findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1980.