

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) be ordered to restore Machinist S. Larson to service and compensate him for all pay lost up to time of restoration to service at the prevailing machinists' rate of pay.
2. That Machinist S. Larson be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and were lost in this period and otherwise made whole for all losses in accord with the prevailing Agreement, dated September 1, 1977, as subsequently amended.

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 a machinist assigned to the Carrier's Brighton Park Turbo facility on February 2, 1981. Essentially, the Carrier charges the Claimant with threatening the general foreman with bodily harm, trying to start a "scuffle" with him both while on duty and after both were to be off-duty later that day. The record shows that the Claimant, although a seven-year employe, had only been at this facility for several months. Earlier that day this same official had confronted the Claimant out of position and later found him in the parking lot without permission. It was following this second incident that the Claimant purportedly committed violations of Rules of Conduct "I" and "J" by the alleged actions. A hearing was held and the charges thereafter sustained; the Claimant was removed from service February 25, 1981.

While this Board may conclude, on the basis of careful review of the record, that the Claimant was in violation of Rules dealing with not being on his assignment and possibly even some discourtesy toward his supervisor, there is nothing in such record to support the specific charges levied against the

Claimant. There is some evidence that the Claimant was chagrined at the Supervisor's repeated challenges to his whereabouts, but the events set out in the transcript fail to establish a reasonable basis to affirm the charges brought against the Claimant. The Carrier must bear some obligation to do more than merely assert error on the part of an employee; this is particularly true where the outcome is so grave as to involve discharge. In point of fact, the charging supervisor apparently concluded the Claimant's being out of position as the basis for a train delay; this occurred before the charge was issued against him. Based upon the record presented in this case and the specific charges raised against the Claimant, we conclude that the record does not support the discipline imposed.

The Claimant shall be returned to duty and the charge expunged from his record. He shall be made whole for lost wages and benefits at the appropriate straight time rate less any and all off-sets called for in the Agreements or Rules in effect between the parties.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1983.