

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Form 1

Award No. 12709
Docket No. 12657
94-2-93-2-63

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(International Association Of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That, in violation of the current agreement, CSXT (former Chesapeake & Ohio Railroad Company) arbitrarily disciplined Machinist D. E. Miller by unjustly suspending him for thirty (30) days. The suspension was effective on June 5, 1992.
2. That accordingly, CSXT be ordered to compensate Machinist Miller for all lost time at the pro-rata rate of pay as of May 21, 1992, and that his record be cleared."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all of 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 were given due notice of hearing thereon.

On May 21, 1992, Claimant was notified of an Investigation, to be held May 27, 1992, concerning Claimant's being away from his assigned work area without permission and washing his personal automobile while on duty at 11:35 P.M. on May 20, 1992. Claimant was held out of service, pending the Investigation. At Claimant's request, the Investigation was held on May 22, 1992, and on June 5, 1992, Claimant was suspended for 30 calendar days. Claimant's suspension included the time he had been held out of service.

The Organization contends that Claimant was denied a fair Hearing. The Organization argues that Carrier prejudged Claimant's guilt, as evidenced by Carrier's hostile removal of Claimant from service pending the Investigation. The Organization further argues that Claimant was denied the right to cross-examine witnesses against him.

The Organization also contends that Carrier failed to carry its burden of proving Claimant's guilt of the charges against him. The Organization contends that there was no evidence that Claimant was washing his car while on duty. Rather, according to the Organization, the evidence establishes that Claimant worked through his break and lunch periods and properly took an "early quit" and rinsed dust generated by the condition of the parking lot off his car. Furthermore, the Organization contends that the evidence shows the 30 day suspension to be arbitrary and capricious.

Carrier contends that the Hearing Officer conducted the Investigation in a fair and impartial manner, and gave Claimant wide latitude in conducting cross-examination. Carrier further argues that Claimant admitted that he was rinsing off his automobile, was outside of his assigned work area and did not have permission. Furthermore, in Carrier's view, there is sufficient evidence to support the rejection of Claimant's position that he did not need permission to take an early quit. Finally, Carrier contends that the 30 day suspension was an appropriate penalty, in light of the nature of the offense and Claimant's prior record.

The Board reviewed the transcript of the Investigation. We find that Claimant was afforded ample opportunity to cross-examine the witnesses and considerable latitude in his questioning. We find no evidence that the Investigation was conducted in such a way as to deny Claimant a fair Hearing.

The Board also finds no evidence that Carrier prejudged Claimant's guilt. Carrier had discretion, based on the nature of the offense, to withhold Claimant from service pending the Investigation. See, e.g., First Division Award 20163; Fourth Division Award 4499.

We reviewed the record and, based on that review, find that substantial evidence supports the conclusion that Carrier proved the charges against Claimant. Claimant admitted rinsing off his automobile during a period that he was supposed to be on duty. Claimant initially claimed that he was on wash-up time during the incident. Carrier, however, documented that wash-up time did not begin until 11:40 P.M. Furthermore, Claimant admitted that at the time of the incident, he was in street clothes.

Claimant further contended that he had worked through break and partially through lunch and had taken an early quit which he believed to be proper. Claimant's Foreman, however, testified that he did not authorize an early quit and that if Claimant had taken an early quit, Claimant should have marked his time card to show a punch out time of 11:30 P.M. and a paid lunch. The Foreman further testified that he had instructed Claimant how to do this in the past. Claimant's explanations were not credited on the property and the evidence in the record supports that determination.

We next consider the severity of the penalty. We review the penalty to determine whether it is arbitrary, capricious or excessive. This, however, does not give us a license to substitute our judgment for the judgment made on the property. Claimant's disciplinary record is long and substantial, including recent counsellings and formal discipline for similar offenses. Under these circumstances, we are unable to say that the penalty was arbitrary, capricious or excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.