

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13434

Docket No. 13348

99-2-98-2-34

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and
(Aerospace Workers (District 19)

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM:

1. Consolidated Rail Corporation arbitrarily and capriciously assessed Machinist R. W. Garlow thirty (30) days' deferred suspension following trial held on August 29, 1996.
2. Accordingly, the decision should be reversed, Machinist R. W. Garlow exonerated of the charges and his records purged of any reference thereto.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was advised of a Hearing to be held to determine his culpability for the following charges:

1. Your insubordinate behavior evidenced by your failure to follow instruction given to you by Mr. E. Puzzuoli between the hours of 3:00 P.M. and 11:00 P.M. on July 2, 1996, at North Yard, 11650 Mt. Elliott, Detroit, Michigan, whereby you were issued instructions to work on Locomotive 7713 at Monroe, Michigan and then go to River Rouge, Michigan for your next assignment (GLM) at which time you returned to North Yard for lunch.
2. Your insubordinate behavior evidenced by your failure to follow instruction given to you by Mr. Cleveland in a letter dated December 13, 1995, Item #4 'That upon completing your work at another yard, that you will contact the supervisor by phone or radio letting him know that you have completed the work', whereby on July 2, 1996, you were instructed by your Supervisor Mr. Puzzuoli at 3:00 P.M. to work the Locomotive 7713 at Monroe Yard and you returned to North Yard without contacting your supervisor when your work was completed at Monroe, Michigan.
3. Your insubordinate behavior evidenced by your failure to follow instruction given to you by Mr. Cleveland in a letter dated December 13, 1995, Item #6 'That the diesel maintainer's work report is to be made out daily', whereby on the following dates you failed to fill out and turn in a work report at the end of the shift:
June 2-3-8-9-10-11-18-21-25-28-30 and July 1, 1996.
4. Your insubordinate behavior evidenced by your failure to follow instruction given to you by Mr. Cleveland in the letter dated December 13, 1995, Item #7, 'EL-106 were not completed or filled out', whereby on the following dates you did not fill out an EL-106 on the locomotives:
June 21-22-23-24-25-28-29-30 and July 1-2-3, 1996.
5. Your insubordinate behavior evidenced by your failure to follow instruction given to you by Mr. McIntyre on October 14, 1994, whereas you were to complete or fill out the Flying Squad Work Report 'all columns' and turned in at the end of the shift, and/or 'Diesel Maintainer's Work Report', whereby on the following dates you either did not complete or fill out a work report:
June 2-3-8-9-10-11-18-21-25-28-30 and July 1, 1996."

The Investigation was finally held on August 29, 1996, following which Claimant was assessed a 30 day deferred suspension.

Following the assessment of discipline and during the appeal process, Carrier deleted charge one believing it was based on incorrect data, and modified charges three and five by deleting all dates June 18 and prior as said dates were not within the 30 day window the disciplinary rule provides for.

The representative of Claimant raised several procedural objections to the hearing, alluding each was egregious of and by themselves to warrant dismissal of all charges.

The Board does not agree.

The position that the disciplinary rule allows only one hearing for one charge was violated when Claimant was charged with five acts of insubordination, is not based on sound reasoning. First of all, Claimant was cited for insubordination, one act. The five charges are in reality nothing more than five separate occasions of insubordination. Secondly, even if there was more than one charge, there is nothing within the Agreement precluding one hearing to find if sufficient evidence exists to support each charge.

The discrimination charged by Claimant's representative because Claimant, a Native American, was charged with failure to complete certain forms and others were not, is dismissed by the Board lacking sufficient evidence. Much more evidence is required before a charge of discrimination, a serious charge, can be sustained.

Regarding the merits of the case, this Board finds that Carrier furnished sufficient evidence to support charge two. Claimant knew he was to call in after he completed the work at the outlying point before moving elsewhere. This is evident by his testimony that after servicing the engine at the outlying point, he attempted to use the hand held radio to communicate with home base even though he knew he was out of range, and he also testified he went to the Yardmaster's shanty to use the company phone, only to find the shanty locked. He overlooked using the radio in the unit he serviced, or he could have used a pay phone.

Regarding charge three, four and five, from Carrier's testimony it is clear that Claimant did not complete the forms the Carrier states he is obligated to complete. This

Board is somewhat puzzled by Carrier's actions in regards to these forms. For instance, if the incomplete forms are of such importance to the Carrier's operations, then why let a month of such incomplete forms go unchecked? Why wasn't someone on Claimant's case June 2, 1996, about the incomplete June 1, 1996 form?

In fact, if the timely filing of these forms fully completed by the Engine Inspectors are of such importance to the operation, the Carrier has to show a much more determined effort in enforcing this policy than it has in the instant case.

Insofar as this Board is concerned, only item two of the charges has been substantiated. Claimant's culpability for charge two is sustained. Charges three, four and five, for reasons set forth above, are not sustained. The 30 day deferred suspension is reduced to a written entry of facts (a record mark) based on the second charge only.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of June 1999.