

Award No. 1077

Docket No. 1009

2-LV-MA-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier used coercive and intimidation methods, as well as a false representation, to effect a hearing at 1:00 P. M. on Monday, May 22, 1944, involving Machinist Helper Schneider.

2. That the carrier violated the controlling agreement, and particularly Rule 37, when Machinist Helper Roy Schneider was suspended at 3:30 P. M., May 22, and discharged him on June 1, 1944, without a proper hearing.

3. That in consideration of the aforesaid, Machinist Helper Roy Schneider is entitled to be by the carrier

(a) Restored to service with all seniority rights unimpaired.

(b) Compensated for all wage loss retroactive to 3:30 P. M. May 22, 1944, less the amount earned in other employment.

EMPLOYEES' STATEMENT OF FACTS: Roy Schnieder, the claimant, was employed by the carrier at Ashmore Terminal, Pennsylvania, as a laborer on December 4, 1941, and on May 8, 1942, he was promoted to the rank of a machinist helper in which position he remained continuously until 3:30 P. M., May 22, 1944.

At about 1:00 P. M., May 22, 1944, Local Chairman James E. Donovan of the machinists' local committee and Claimant Schneider were each notified, without the knowledge of the other, to report to the office of the general foreman. When they arrived at the office Mr. Bennett, master mechanic, was there, and he informed them that an immediate hearing was to be conducted for an occurrence on May 20, between Machinist Helper Seward Leib and Machinist Helper Schneider.

Local Chairman Donovan objected to proceeding with such hearing as proposed by Mr. Bennett because it would not be a fair hearing, for the reason he had not been allowed any time to prepare for it, or, to secure such witnesses as might be deemed necessary. Thereupon, Mr. Bennett informed Local Chairman Donovan that discipline would be imposed upon him for insubordination. However, after finally over-ruling all objections to the hearing by Local Chairman Donovan, the master mechanic then assured him and Claimant Roy Schneider that there would be no discipline imposed on Machinist Helper Schneider as a result of the findings in the record of that hearing.

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.

The parties to said dispute were given due notice of hearing thereon.

On May 20, 1944, someone threw a ball of grease into some water on the floor near where Roy K. Schneider, machinist helper, was working and some water splashed on him. He immediately approached S. J. Leib, machinist helper, who was standing near by, struck him, knocked him down, and rendered him unconscious. Leib was taken to the hospital, Mr. Schneider assisting in placing him on the stretcher. This occurrence was on Saturday, May 20; and, on Monday, May 22, Mr. Schneider and his committeemen were asked to go to the office of the general foreman for preliminary inquiry.

It is the contention of the employees that a fair hearing was not held and that there was coercion and intimidation used. There was no showing in the record of coercion or intimidation. When Mr. Schneider was asked if he was properly notified as to the nature of this investigation, and if he knew he was privileged to have a representative or witnesses of his own choosing present, he replied, "Yes, Sir." He was represented by his committeeman.

From the facts set out in this record, the carrier was justified in subjecting Mr. Schneider to disciplinary action. Schneider was entirely to blame. This referee believes that as Mr. Schneider has been out of work for a year, there being no showing that he ever violated any of the rules before and that the attack on Mr. Leib was not premeditated, that Schneider should be reinstated without pay.

AWARD

Schneider will be reinstated, with seniority rights restored, without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1945.