

Award No. 4204
Docket No. 4051
2-RF&P-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

RICHMOND, FREDERICKSBURG & POTOMAC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinist H. B. Fitzgerald, RF&P RR, was unjustly suspended and withheld from work from November 23, 1960 for a 15 day suspension.

2. That accordingly the Carrier be ordered to compensate Mr. Fitzgerald for all time lost and the charge of "Refusal of Duty" be stricken from his record.

EMPLOYEES' STATEMENT OF FACTS: Machinist Fitzgerald, hereinafter referred to as the "Claimant" was employed by the RF&P Railroad, hereinafter referred to as the "Carrier." The claimant was employed as a machinist in the wheel room in the RF&P Shops at Richmond, Virginia and assigned to operate boring mill in accordance with his seniority.

On November 22, 1960, Mr. A. M. Amos, foreman of wheel room, advised the claimant he was removing him from the boring mill and assigning him to the wheel lathe room. The claimant objected to the change of assignment and the fact that another machinist was being placed in his position.

Mr. Amos then advised the Claimant that he could run the wheel lathe, see General Foreman Smith or punch out. The claimant decided to talk this over with Mr. Smith. After this discussion the claimant was in a nervous condition and he advised Mr. Amos that he was going to punch out.

On November 23, the claimant reported for work and without any explanation was sent home. On November 25, the claimant received notice that he was to appear for an investigation on November 28, in the office of general foreman at 9:00 A. M. The claimant appeared for the investigation and was actively suspended for 15 days.

ducting the investigation. In fact, both agreed that the investigation was conducted in a "fair and impartial manner." Mr. Smith was not a witness against claimant, and his decision that claimant was guilty as charged was based on claimant's own admission of guilt.

In Third Division Award 8711, where an employe was dismissed from service for refusing to accept a call for overtime on his rest day, the Board held that the employe had a perfectly valid objection to the hearing procedure followed by the railroad; however it denied the employe's claim for reinstatement with pay for time lost and stated as follows:

"Nevertheless, in setting of the facts before us, these shortcomings do not constitute reversible error, for claimant was not unduly prejudiced by them since all relevant facts, upon which our findings of insubordination is predicated, are admitted and there is no material way in which claimant's case was injured by those defects."

In this case the claimant was afforded a fair hearing, and the employe's belated procedural objections are not valid. Claimant admitted the refusal of duty involved in this case, hence, he was not prejudiced in any way by the fact that Mr. Smith conducted the investigation.

CONCLUSION: Claimant admittedly refused to operate a wheel lathe his foreman instructed him to operate. Instead, he left the job. For his refusal of duty he was suspended from duty pending a fair and impartial hearing. At this hearing, claimant admitted his guilt, and at the conclusion thereof, both he and his duly authorized representative admitted that the hearing had been conducted in a fair and impartial manner.

A total suspension of only 15 days for admitted refusal is extremely lenient, and certainly affords no basis for holding that the Carrier was arbitrary or capricious. This claim should be denied.

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 had an assignment as a machinist in carrier's wheel shop. For approximately two years he had there operated the boring mill. On November 22, 1960, Mr. A. M. Amos, foreman to the wheel room, informed him there were to be some shifts or changes made among the operators of the machines and that claimant was being moved from the boring mill and assigned to the wheel lathe. Claimant objected and after some discussion the foreman told him he would have to do one of three things, either run the wheel lathe, see Mr. Smith (General Foreman, Locomotive Department), or "punch out". After about a half hour, having discussed the matter with Mr. Smith and again later with both Mr. Smith and Foreman Amos, claimant said to Mr. Amos "punch me out" and then claimant went home. As a result, he was held out of service and charged with refusal of duty. Investigation pursuant

to said charge was held on November 28, 1960, and at its conclusion the claimant was found guilty as charged and was assessed a 15 working day suspension. He asks compensation for that time lost and that the charge of "Refusal of Duty" be stricken from his record.

At the investigation, claimant admitted he was instructed by his foreman to work on the wheel lathe, that he fully understood the instructions and that he did not comply therewith, but instead left his assigned work and went home. At that time he gave no valid reason nor excuse for refusing to operate the wheel lathe; he did not say he was sick and unable to work (as he later claimed) nor that there was anything about the newly assigned work which would imperil his health or safety. If the new assignment in his estimation had in any way violated his rights, he should none-the-less have obeyed the instructions and later proceeded to seek redress as provided by the agreement. Accordingly, as a result of the investigation, claimant's conduct was held to be refusal of duty or insubordination. Awards 2134 and 2715.

As was said in Award 1157, cited in claimant's rebuttal argument:

"The general rule is that imposition of discipline is the prerogative of management and this Division will not review a decision for which there is a reasonable basis. We have not, however, hesitated to intervene when the record discloses that an employe has not had a fair and impartial hearing, or when the evidence adduced clearly does not support the charge, or when the penalty imposed is out of all reason."

But in the case now before us, applying the principles set forth in Award 3894 and many prior awards, we find no evidence of unfairness or bias or prejudice in the conduct of the hearing; claimant here admitted refusal to carry out his assignment; there was no real conflict as to any material evidence and that which was adduced substantially supported the charge; finally, the penalty imposed was in no sense unreasonably harsh or unconscionable, in view of the seriousness of such an offense which has frequently been held to justify permanent termination of employment.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1963.