Award No. 5160
Docket No. 4898
2-C&NW-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago and North Western Railway Company violated the collective agreement and unjustly treated Machinist John R. Anderson when it suspended him from service on Sept. 2, 1964, and discharged him from service on Oct. 5, 1964.

2. That accordingly, the Chicago and North Western Railway Company be ordered to reinstate this employe with seniority rights unimpaired and compensate him at Machinist pro rata rate plus six percent (6%) interest for all wage earnings deprived of; also fringe benefits, (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since Sept 2, 1964, until restored to service.

EMPLOYES' STATEMENT OF FACTS: Mr. John R. Anderson, hereinafter referred to as the claimant, was employed as a Machinist by the Chicago and North Western Railway Company, hereinafter referred to as the carrier at Clinton, Iowa.

The Car Shops Superintendent, Mr. R. E. Powers, suspended the claimant from service at the close of his shift on September 2, 1964. On September 3, 1964, Car Shops Superintendent R. E. Powers charged the Claimant as follows:

"CHARGE: Your responsibility for your failure to properly perform your duties as Machinist in the Wheel Shop, Clinton, Iowa, while assigned to work on the burnishing lathe, specifically your failure to comply with specific instructions to produce a minimum of 9 axles per hour during your tour of duty and your failure to do so on September 2, 1964, and dates prior thereto, resulting in your being suspended from service September 2, 1964."

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.

Production wanted by Carrier was 9 axles per hour. Under the record it was not excessive and could be produced without over-working.

No rule was violated.

AWARD

Claim of Employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5160

The Referee and Carrier members of this Division constituting the majority are in error in their Award No. 5160 when they base their conclusions solely on the following:

> "Production wanted by Carrier was 9 axles per hour. **Under the record, it was not excessive** and could be produced without overworking. No rule was violated.
>
> Claim of Employes denied." (Emphasis ours.)

The Referee's conclusions supported by the Carrier members are not based on facts projected in the record, nor on the controlling agreement rules, with a complete obvious disregard of the hearing transcript.

In this transcript, the employe's representative requested that the Carrier's witness produce and insert his alleged time study and motion study records, along with the alleged production records of other employes. The record is very clear as to the insistence of the Union Representative that specific records be made available to them, even up to and including the General Chairman's letter to Mr. T. M. VanPatten, Director of Personnel, on June 3, 1965. This letter still requested that the Carrier produce documentary evidence to support their allegations and self-serving assertions.

The fact that there is no probative evidence in the entire record of the Carrier, including the record of the transcript of the investigation to support the Carrier's actions, makes it reasonable to assert that no records exist. Therefore, they failed in their burden of proof that this instant claimant had violated anything or was guilty of anything, including the violation of the shop craft rules.

The majority by their actions here has caused the Second Division to exceed its authority in making this Award. They have subscribed to piece work when no such rule exists in the collective bargaining agreement, and have apparently ignored the controlling rule which deals with the basic day for an employe under the shop craft agreement.

> "Rule No. 1. Eight (8) hours shall constitute a day's work. All employes coming under the provisions of this schedule shall be paid on the hourly basis, except as otherwise specified."

Rule 1½, Work Week, states:

> "The expressions 'positions' and 'work' used in this rule refer to service, duties or operations necessary to be performed the specified number of days per week . . ."

There is no mention in the above rules of piece work or production limits of any kind. Therefore, the Referee and the Carrier members were improper to go outside of the agreement in order to make this impeachable judgment. It is well established by the courts and the National Railroad Adjustment Board as a whole that the task of the NRAB is to construe and apply agreements, not to rewrite them — as in this instant award.

We are constrained to a vigorous dissent.

R. E. Stenzinger
E. J. McDermott
C. E. Bagwell
O. L. Wertz
D. S. Anderson

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Keenan Printing Co., Chicago, Ill.