

Award No. 5363

Docket No. 5221

2-C&O-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Northern Region)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Machinist Helper Charles F. Sobanski, Sr. was unjustly suspended from service on June 1, 1965 for a period of fifteen days.

2. That accordingly the Carrier be ordered to compensate the claimant for fifteen days for loss of wages as a result thereof.

3. That accordingly the Carrier be ordered to clear Charles F. Sobanski's record of this charge.

EMPLOYES' STATEMENT OF FACTS: Machinist Helper Charles F. Sobanski, Sr., hereinafter referred to as the claimant was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the Carrier, as a machinist helper at the Ludington, Michigan Roundhouse on the 4:00 P. M. to 12:00 midnight shift, Tuesday through Saturday, rest days Sunday and Monday.

On April 23, 1965, Carrier's Supt. Locomotive Department addressed the following letter to claimant:

"THE CHESAPEAKE AND OHIO RAILWAY COMPANY
Grand Rapids, Michigan
April 23, 1965
File S-

Mr. Charles F. Sobanski, Sr.
206 Fifth St.
Ludington, Mich.

Dear Sir:

Arrange to report for hearing at 2:00 P. M., Thursday, April 29 at Trainmaster's Office, Madison St. Depot, Ludington, Michigan on the following charges:

All data herein submitted in support of Carrier's position has been presented to the Employees or duly authorized representatives thereof and made a part of the question in dispute.

An oral hearing before the Board is not requested unless Employees should request such hearing in which event Carrier should have advance notice thereof.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

Machinist Helper Charles F. Sobanski, claimant, was employed by carrier as a Machinist Helper in the Ludington, Michigan Roundhouse on the 4:00 o'clock P. M. to 12:00 Midnight shift, Tuesday through Saturday with rest days on Sunday and Monday. The record discloses that on Saturday, April 10, 1965, one of claimant's workdays, claimant performed his duties until approximately 10:30 P. M., at which time, he absented himself from carrier's property. The record discloses that he did not inform anyone that he was leaving. Claimant contends that he was sick; that there was no one to seek permission from to leave in the case of sickness. The record further discloses that at about 11:30 P. M., this claimant drove his car into a parked car and as a result thereof was charged with drunk driving while intoxicated by the City Police. The record further discloses that this charge was later reduced to that of careless driving and claimant entered a plea of nolo contendere. After hearing the evidence, the claimant was found guilty and sentenced to pay a fine of \$50.00 and court costs. The record further discloses that claimant filled out a time card showing that he was on duty and worked from 4:00 P. M. until 12:00 A. M. on April 10, 1965. An investigation was then held at carrier's office in Ludington, Michigan on April 29, 1965, wherein testimony was taken concerning three charges against this claimant, to-wit:

- "1. Absenting yourself from duty without permission during your assigned tour of duty which started at 4:00 P. M. on Saturday, April 10, 1965.
2. Falsification of time card covering your assigned tour of duty which started at 4:00 P. M. on Saturday, April 10, 1965.
3. Conduct unbecoming an employe of this company by reason of being arrested by Ludington Police and charged with driving while under the influence of intoxicating liquor in connection with automobile accident in which you were involved and which occurred at 11:30 P. M., Saturday, April 10, 1965, at a time when you were supposed to be on duty for

this company and at a time for which you claimed pay from this company."

Although the foreman was not on duty at the time this claimant left, Lead Machinist Nelson was on duty. The record discloses that no notification was given to Lead Machinist Nelson, nor was a phone call made to Foreman Miller informing him that claimant was sick and was leaving his post. Claimant's own testimony, contained in a transcript of the investigation, discloses that claimant left the Ludington Roundhouse at about 10:30 P. M. The accident in which claimant was involved occurred at 11:30 P. M., at a point only $\frac{3}{4}$ of one mile from his work location. This gives rise to the question of why claimant, if he was sick as he contends, did not go straight home.

There was no denial of the charge that claimant's time card had been filled out showing an incorrect number of hours actually worked. On pages 30 and 31 of Exhibit A of carrier's submission appears the following:

"Q. Machinist Helper Sobanski, did you make effort to contact Foreman Miller on April 15, 1965 relative to having your time card corrected for April 10, 1965 to show the correct number of hours that you actually worked?

A. No, I didn't.

Q. Machinist Helper Sobanski, was there any reason why you did not feel it necessary to have the time card corrected to show the proper charge?

A. Well, I was still dizzy yet from that accident.

Q. Machinist Helper Sobanski, with reference to your daily service card for April 10, 1965, in which you admitted filling out the distribution column for a total of 9 hours, from that date until the date of the hearing, had you made any effort to have the time card corrected?

A. No, not yet."

Although the record discloses this claimant was charged with driving while under the influence of intoxicating liquor, this charge was reduced to careless driving and there is no evidence of probative value contained in this record that claimant was actually intoxicated at the time of the accident. After the hearing on the property, the claimant was suspended for a 15 day period.

In a case of this nature, this Board has repeatedly held that a disciplinary penalty imposed by carrier upon an employee can successfully be challenged by this Board only on the ground that it was arbitrary, capricious, excessive or an abuse of managerial discretion. See Awards 4199, 3874, 4000, 4098, 4132 of the Second Division. The evidence presented in this instance reveals that claimant's suspension was based upon reasonable grounds; that carrier did not act arbitrarily, capriciously, excessively nor did it abuse its managerial discretion. The evidence is abundant to the effect that claimant left his post of duty without gaining permission or informing any of his superiors that he was leaving. This Board feels that in the absence of the foreman, claimant should have notified Lead Machinist Nelson. This Board further feels that claimant's time

card was incorrectly filled out, and that even up to the date of the hearing on the property, claimant had made no effort to correct the time incorrectly claimed by him. This Board further finds that this claimant was involved in an accident at a time when he was supposed to be on duty and at a time for which he claimed pay from this company.

The organization contends that there was a practice of loose handling of time cards and of loose handling of gaining permission to leave. This is no defense. This Board should not and will not become a party to encouraging loose procedure at any level.

Because of the numerous employees engaged in the railroad industry, the veracity of such important items as time cards, claims and other records of a similar nature, should be beyond reproach. Employees must be charged with the highest degree of integrity in matters of this nature and should not be allowed to hide behind the cloak of carelessness or loose procedure. In keeping with Awards 3626, and others, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1968.