



Award No. 5748

Docket No. 5495

2-EL-MA- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(MACHINISTS)**

ERIE LACKAWANNA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier unjustly suspended Machinist James E. Lacey for thirty (30) days effective August 25, 1965, account alleged failure to report a personal injury sustained August 6, 1965.
2. That accordingly, the Carrier be ordered to compensate the aforesaid employe for thirty (30) days, \$706.80, account the aforesaid unjust suspension.

EMPLOYEES' STATEMENT OF FACTS: Machinist James E. Lacey, hereinafter referred to as the Claimant, was employed by the Erie-Lackawanna Railroad Company, hereinafter referred to as the Carrier, on the first shift in its Jersey City Engine House. During the performance of his assigned duties on Friday, August 6, 1965, at approximately 9:30 A.M., Claimant bumped his side on Diesel Unit #923 and at the time it was believed by the Claimant to be of no consequence, as it did not bother him very much. Accordingly, he continued to perform his assigned duties until the lunch period. During his lunch period on the same day, Claimant commenced to suffer severe pains and when he got up from lunch at Mamie's Bar and Grill, he blacked out. When he came to, he proceeded directly to the hospital. The hospital immediately notified the Company Doctor, Dr. Moriarity, who requested that Claimant come to his office. Claimant proceeded to the Company Doctor's office where he was examined and returned to the hospital for X-Rays. Dr. Moriarity gave Claimant a strong sedative and advised him that upon completion of the X-Rays he should go straight home, take the sedative and go to bed. Claimant departed from the hospital at 3:40 P.M., went directly home and obeyed the instructions of the Company Doctor.

Saturday and Sunday, August 7 and 8, 1965, the two days following the incident, were Claimant's assigned rest days. Claimant reported the accident to his foreman on Monday, August 9, 1965.

"Disciplinary action for violation of Safety Rule 108, as applied in this case is much too severe, ..."

In assessing discipline in this case Carrier considered claimant's service record (Carrier's Exhibit G), which indicated two prior personal injuries and a recent discipline for sleeping on duty. See Second Division Awards 3430, 4042; Third Division Awards 13648, 13684 and 15184, among many others.

The Organization has asserted "discrimination" during its handling of this case on the property; however, it has presented no evidence in support of this charge, Carrier submits that, in light of the facts, admission and the employee's record, the discipline imposed was neither arbitrary, capricious nor discriminatory and was fully warranted and justified.

It is a well-founded principle of this and other Divisions of the National Railroad Adjustment Board that under such circumstances as here involved discipline is a prerogative and discretionary power of management which the Board refuses to disturb. That they will not substitute their judgment for that of Carrier is well settled. See Third Division Awards 13907 (EL), 14272 (EL) and 15634, among many others.

Petitioner's claim in this dispute is, in reality, nothing more than a plea for leniency. In this respect, the various Divisions of the National Railroad Adjustment Board have consistently held that request for leniency is strictly a matter of managerial discretion. As Carrier's denial of leniency was not improper, the Division is not able to grant leniency where Carrier has refused. See Second Division Awards 2787, 2099, 3894, 4042; Third Division Awards 6085, 8478, 8891, 13116 and 14800.

Carrier has shown that the claim is without merit under the applicable agreement. Therefore, this claim should be denied in its entirety for lack of merit.

(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 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 waived right of appearance at hearing thereon.

This is a discipline case.

Machinist Lacey, Claimant herein, was employed on the first shift in the Jersey City Engine House at all times in question. He sustained a personal injury about 9:30 A.M., Friday, August 6, 1965 while at work. His assigned rest days were Saturday and Sunday, August 7, 8. He made out an accident report on Monday, August 9. He was notified on August 10 to report for investigation for his failure to comply with Safety Rule #108, Book Rules Safety, which provides:

"All personal injuries, regardless of how trivial, must be reported immediately on the prescribed form and employee given medical attention."

Shop Craft Agreement Rule 31 and Safety Rule #108, supra, complement each other and are not in material conflict.

The transcript of the investigation has been duly examined. Carrier's decision will neither be reversed nor modified.

A W A R D

Claim (1) denied;

Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.