

Award No. 6220

Docket No. 6026

2-C&O-MA-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinist Thomas P. Pettigrew was unjustly given a ten (10) day overhead suspension and placed on six (6) months' probation.

2. That accordingly the Carrier be ordered to clear the service record of Thomas P. Pettigrew in connection with this charge.

EMPLOYEES' STATEMENT OF FACTS: Machinist Thomas P. Pettigrew, hereinafter referred to as the claimant, was employed by the Chesapeake and Ohio Railroad, hereinafter referred to as the carrier, for a period of five (5) years and three (3) months in carrier's shops at Huntington, West Virginia on the first shift 7:00 A.M. to 3:30 P.M. Monday through Friday, rest days Saturday and Sunday.

The carrier, represented by Mr. D. W. Walker, Shop Superintendent, Huntington Shops, notified claimant under date of March 10, 1969 to attend an investigation to be held in production manager's office at Huntington Shop at 9:00 A.M., March 12, 1969; however, this date was by mutual agreement changed to March 17, 1969 at 9:30 A.M. on the following charge:

"You are charged with failure to properly perform your duties as machinist on March 5, 6 and 7, 1969, while assigned to power assembly stripping in the Power Assembly Gang by reason of the fact that on these days your output was as follows:

Wednesday, March 5, 1969 - stripped 8 EMD power assemblies.
Stripped 5 EMD cylinder heads.

Thursday, March 6, 1969 - stripped 12 EMD cylinder heads. Stripped rings from 8 EMD pistons. Loaded one basket of EMD cylinder liners with overhead crane.

under investigation. The information developed also indicates that Pettigrew's output on these dates were below his output on other dates, which may or may not have been satisfactory.

Quite a bit was said at the investigation with respect to the status of Pettigrew as to whether he was apprentice, tentative-machinist, or bona fide machinist. As indicated in Carrier's Statement of Facts, Pettigrew was initially employed as a machinist apprentice, and was subsequently upgraded to a tentative-machinist. A tentative-machinist receives machinist's rate of pay and may be used to perform any work of the machinist craft, and at the time of negotiating the upgrading agreement, question was raised by employe representatives as to what carrier's position would be with respect to those who had been upgraded to tentative-machinists and were not qualified to do certain phases of work. In this respect, carrier representative told the employe representatives that carrier did not intend to be unreasonable in this respect, and so long as the man worked to the limit of his experience and capabilities, no problem would be encountered and this commitment on the part of carrier has been fully met. There was no understanding to the effect that once a man was promoted to bona fide mechanic, which is done by letter agreement between the undersigned and the general chairman of the craft, that the employe would continue to be recognized as an apprentice or tentative-mechanic. It is true that one so promoted does not receive his indenture until he completes 1040 days' service; however, this is for the purpose of giving the individual employe a 1040-day indenture form, but insofar as the carrier is concerned, the man is considered a bona fide full-fledged mechanic, and his name goes on the seniority roster the date permanently promoted, and he is considered a full-fledged mechanic in all respects.

It should also be pointed out that in the instant case, Pettigrew's qualifications to do the job are not at issue. What is at issue is the fact that he deliberately and knowingly refused to perform normal duties expected on his assignment and, as indicated in the statements of Hinerman and Sullivan, spent most of his time at places other than his work area.

It is the position of the carrier that the evidence fully supports the minimal discipline rendered in the instant case. A reading of the lengthy investigation reveals the issues in this case and the same harangue as involved in the Pettigrew case took place in the cases of William L. Jackson, Larry Jack Smith, Ernie Ray Davis and H. R. Davis, Jr., and carrier wishes to make those cases an overall part of the instant case by reference.

Carrier feels that it has the right, duty and obligation to its employes, the public in general, and to its stock holders to properly manage its affairs. To sustain the claim of the employes in the instant case would destroy much of the ground that has been gained in employe-employer relationship since this and other investigations were held at Huntington Shops in early 1969. It has been held many times by this Board that the Board will not substitute its judgment for that of the carrier unless it can be shown that the carrier's discipline as rendered was arbitrary, capricious, or unjust. This cannot be shown in the instant case. To the contrary, the discipline rendered in view of all circumstances was extremely lenient; therefore, the Carrier urges that the claim of the employes be denied in its entirety.

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.

Claimant is one of five machinists employed at Huntington Shops, Huntington, West Virginia, who, after an investigation, were given overhead suspensions and placed on probation for failure to properly perform their duties and with insufficient output for an eight hour tour of duty. No serious error exists in the conduct of the investigations. The procedural rules governing such investigations were fully complied with.

After a careful reading of the transcript of the investigation, it is abundantly clear that the Claimant and his four colleagues were engaged in a deliberate work slowdown, which resulted in improper work performances and in a substantial decline in work output. It is difficult to find any convincing evidence that these employes were working in their normal capacity on the dates in the claim.

Employes say that the investigation and the resulting penalty arises out of the fact that the Carrier attempted to impose a piece work operation without negotiation required in Rule 1. Paragraph (a) of that rule provides that: "Eight hours shall constitute a day's work." No work quota is mentioned. Paragraph (b) reads:

"(b) This rule is intended to remove the inhibition against piece work contained in Rule 1 of the shop crafts national agreement, and to permit the question to be taken up for negotiation on any individual railroad in the manner prescribed by the Railway Labor Act."

It is true that there are no production quotas. None are necessary. All that the Carrier desires is a fair day's work. This the Claimant and his charged colleagues did not do on the named dates. No production quotas were imposed.

The record conclusively establishes the fact that the Carrier did not have piece work at any point on its property. Employes have failed to prove that piece work production quotas existed. There was no violation of Rule 1.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.