



Award No. 6221

Docket No. 6027

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 Jack Larry Smith 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 Jack Larry Smith in connection with this charge.

EMPLOYEES' STATEMENT OF FACTS: Machinist Jack Larry Smith, hereinafter referred to as the claimant, was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the carrier, for a period of five (5) years and eleven (11) months in the 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 11, 1969, to attend an investigation to be held in Production Manager's office at Huntington Shop at 9:00 A.M., March 19, 1969; however, this date was by mutual agreement changed to April 10, 1969 at 9:00 A.M. on the following charge:

"You are charged with failure to properly perform your duties as a machinist on March 5, 7 and 10, 1969, while assigned to the repair of EMD cylinder heads March 5; the repair of an Alco 539 cylinder head on March 7; and repair to EMD cylinder liners and application of EMD cylinder heads to liners on March 10; in the Power Assembly Gang by reason of the fact that on these days your output was as follows:

Wednesday, March 5, 1969 - drilled out broken cylinder test cocks from two EMD heads. Drilled out one broken rocker arm stud from EMD cylinder head.

The Employees engaged in a deliberate work slow down with Smith participating therein. The evidence brought forth in the investigation indicates that Smith performed less than two and one-half hours' service on the days included in the charges. Normally an investigation of this type should be concluded in an hour and one-half or two hours. In the instant case the employees made a mockery of the whole proceedings, requiring a day and one-half of handling, parading forth thirteen witnesses with long dissertations on the part of the four employee representatives present with much irrelevant matter brought into the investigation. Of the thirteen witnesses brought in by the employees, three have cases pending before your Board; E. R. Davis, Case No. 70-156, William L. Jackson, Case No. 70-157, H. R. Davis, Jr., Case No. 70-150, and G. R. McClellan, Case No. 70-198; also, one of the Employee representatives, R. A. Bryant, who had much to say in the investigation, has a case pending before this Board, Case No. 8261.

Throughout the investigation the employees allege that investigations cannot be held unless the carrier can show a rule number which the employee has violated, the carrier has no right to establish work standards or determine what is a reasonable day's work, the quality of the supervision is challenged, supervision is accused of instructing employees to deliberately slow down, which statements the accused supervisor specifically denied on page 23. The employees further indicate that they should be the judge of what should be produced and considered as a day's work. The employees also allege that the supervision should require the man to do a reasonable day's work, yet at the same time lend every support to the employees who do "soldier" on the job.

The statement of Foreman Hinerman is quite significant, and after reviewing Hinerman's answers to questions asked, one can easily understand the employees' attack on Hinerman and endeavor to discredit him by their allegations and inferences. Review of the statements of Hinerman and Sullivan will clearly indicate why Smith performed no more actual work than he did on the dates under investigation. The information developed also indicates that Smith's output on these dates were below his output on other dates, which may or may not have been satisfactory.

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 Smith case took place in the cases of William L. Jackson, H. R. Davis, Jr., T. P. Pettigrew, and Ernie Ray Davis, 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 employees, the public in general, and to its stock holders to properly manage its affairs. To sustain the claim of the employees in the instant case would destroy much of the ground that has been gained in the employee-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 employees 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.

The facts, the investigation, and the penalty in this case are identical with that adjudicated in Award No. 6220.

The findings in Award No. 6220 are applicable here, and are affirmed. For the reasons stated in said Award No. 6220, it is the finding of the Board that the claim has no merit.

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.