



Award No. 6223

Docket No. 6029

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 EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

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

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Machinist Ernie Ray Davis was unjustly given a five (5) day overhead suspension and placed on three (3) months' probation.

2. That accordingly the Carrier be ordered to clear the service record of Ernie Ray Davis in connection with this charge.

EMPLOYES' STATEMENT OF FACTS: Machinist Ernie Ray Davis, 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 four (4) 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 18, 1969; however, this date was by mutual agreement changed to April 14, 1969, at 2:00 P. M. on the following charge:

"You are charged with failure to properly perform your duties as a machinist on March 7 and 10, 1969, while assigned to the reclamation of EMD power assembly components in the Power Assembly Gang, by reason of the fact that on these days your output was as follows:

Friday, March 7, 1969 - applied ring sets to 16 EMD pistons. Cleaned the tops of three (3) EMD cylinder liners.

The employees engaged in a deliberate work slow down with Davis participating thereon. The evidence brought forth in the investigation indicates that Davis performed less than three 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 five witnesses with long dissertations on the part of the three employee representatives present with much irrelevant matter brought into the investigation. Of the five witnesses brought in by the employees, two have cases pending before your Board: H. R. Davis, Jr., Case No. 70-150, and L. J. Smith, Case No. 70-149.

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 15. 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 Davis performed no more actual work than he did on the dates under investigation. The information developed also indicates that Davis' 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 E. R. Davis case took place in the cases of William L. Jackson, H. R. Davis, Jr., T. P. Pettigrew, and Larry Jack Smith, 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 stockholders 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.

Keenan Printing Co., Chicago, Ill.

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