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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6408
Docket No. 6251
2-SOU-MA-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 21, Railway Employes' Department, A. F. of L. - C. I. O. (Machinists)
(Southern Railway Company

Dispute: Claim of Employes:

1. That under the current Agreement Machinists D. A. Duggan, Chattanooga, Tennessee, was unjustly held out of service beginning January 28, 1971, and ending at the close of work February 6, 1971.

2. That accordingly, the Carrier be ordered to reimburse the aforesaid employe in amount of seven (7) days pay at the straight time rate and in amount of six (6) days pay at the time and one-half time rate. The latter claim being for overtime lost during the period.

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 was suspended for seven working days for allegedly knocking off early, contrary to instructions.

Carrier presented substantial evidence at the investigation supporting its position that Claimant had knocked off approximately 12 minutes early, contrary to a recently posted Bulletin. Claimant's position was that he did not knock off early, the validity of the Bulletin is challenged, and that he was discriminated against because of his activities as a Safety Committeeman.

The Bulletin in question had been posted prior to the alleged infraction, was modified pursuant to requests initiated by the Organization and was reposted after the incident in question. It was not changed in essential substance. Claimant at the hearing agreed that he was aware of the contents of the original Bulletin.

The record of the investigation contains conflicting testimony relating to when Claimant left his work; it also reveals testimony by Claimant and his witnesses alleging animus and annoyance by Claimant's supervisor due to Claimant's activity as a Safety Committeeman. This latter testimony is denied by Carrier's witnesses.

As this Division said in Award 4981:

> "Carrier is entitled to rely on the observations of its supervisory employees ....It is not this Board's function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible, though controverted, evidence."

The principle that we may not substitute our judgment for that of the Carrier when there is conflicting testimony has been established for many years. Since the record contains adequate evidence to sustain the Carrier's action and the punishment was not excessive, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1972.