

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute:

- (International Association of Machinists
and Aerospace Workers
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- (Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad unjustly suspended Machinist Inspector E. P. Sparr from service sixty-six (66) actual work days from Monday, January 25, 1972 until Monday, April 25, 1972, for leaving post of duty without permission and vandalizing company property on January 8, 1972.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Inspector E. P. Sparr in the amount of eight (8) hours at the straight time rate from January 25, 1972 through April 25, 1972, in addition he receive all fringe benefits flowing to any other employe in active service including vacation rights and seniority unimpaired. In addition to the money amounts herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim; also for his personal records to be cleared by letter of this discipline.

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 waived right of appearance at hearing thereon.

Following a hearing, claimant was suspended from service 66 actual work days for leaving his post of duty and for vandalizing Company property by inserting wooden objects into a lock on a door in Carrier's canteen room. The evidence adduced at the hearing fails to substantiate the former charge but does, however, uphold the latter.

The hearing failed to establish that claimant was away from his post of duty without authority on the claim date. Part of claimant's duties consisted of handling the air card and cab cards that go in the units after they have been typed in the office. And it has been normal practice for claimant, in fulfilling this duty, to go through the canteen door to get to the office. Carrier cannot now be heard to complain of such procedure.

However, General Foreman Dozier testified that he had observed claimant jam a wooden object that appeared to be part of a match stick into the lock assembly of the canteen's north door. There was no evidence that any damage resulted to the lock nor that Carrier went to any expense or inconvenience in rectifying the problem. Rather this action of claimant's was a childish prank apparently perpetrated by him in retaliation for Carrier's closing the canteen. While such self-help on claimant's part is not to be condoned, the discipline assessed him was certainly not commensurate with the offense. It was excessive and we hereby order claimant compensated for all time lost but for five days. Five days suspension, in our opinion, fits the infraction committed. We will not, however, allow the 6% interest claimed on behalf of claimant.

A W A R D

Claim sustained to the extent indicated above in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated At Chicago, Illinois, this 9th day of July, 1974.