

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

Parties to Dispute: { International Association of Machinists
and Aerospace Workers
{ The Long Island Rail Road Company

Dispute: Claim of Employees:

1. That Machinist C. Allen has been unjustly dealt with in that the discipline of thirty (30) working days suspension rendered as a result of Case #532 is arbitrary and capricious.
2. That accordingly, the discipline of thirty (30) working day suspension be rescinded, that Machinist C. Allen be made whole for the five (5) working day suspension actually served and that his record be purged of all material relating to this incident.

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.

On January 30, 1974, the Claimant, Machinist C. Allen, was notified by the Carrier to appear for a trial in connection with the charge of refusing a direct order of his supervisor to perform an assigned duty on the engine of Locomotive 214 on January 29, 1974. On March 22, 1974, the Carrier notified the Claimant of the imposition of a thirty working day suspension because of the incident on January 29, 1974. On September 30, 1974, the Carrier reduced Claimant's suspension from thirty to five working days and put the discipline into effect.

The Organization contends that the Claimant was not afforded a fair and impartial trial because he was not given the opportunity to "plead" to the alleged charge for which the trial was conducted, which thereby established a predetermined attitude of the Trial Officer concerning the guilt of Claimant and biased the proceedings. We disagree. It is not a usual practice to require an employee to "plead" to charges; nor is there any Agreement support for the Trial Officer to require that an employee plead to a charge.

The Organization contends that Rule 35D of the Agreement was violated by the Carrier in that the Claimant was not advised of the exact charge for which he was being tried. We disagree. The Claimant was advised under a notice dated January 30, 1974, of the following charges:

"Your refusal of a direct order of your supervisor to perform a duty assigned to you on Engine of Locomotive 214 during your assigned bulletin hours on January 29, 1974, Morris Park Locomotive Shop" (Employee Exhibit "A")

There can be no doubt from the above notice and the facts contained in the entirety of the record that the Claimant knew the exact charges for which he was being tried.

The Organization contends that the transcript of trial does not support the Carrier's finding that Claimant is guilty of an unjustified act of insubordination. Specifically, the Organization contends that the working conditions which caused the alleged insubordination were satisfactorily adjusted by Shop Steward Donaghy and Gang Foreman D. Dean.

Steward Donaghy testified that he met with Gang Foreman D. Dean, concerning work conditions in the back shop. The problem was that one of the large overhead doors was open and Locomotive 214 was through the opening. The temperature on this late January day was about 45 degrees and a northwest wind was blowing about 15-20 MPH. Steward Donaghy testified that he left the area with the understanding that Gang Foreman D. Dean was agreeable to a short delay in the men getting up on the locomotive while the knuckle work was done (so that the engine could be moved enough to close the door). The meeting of Steward Donaghy and Gang Foreman Dean took place at 7:45 A.M. Steward Donaghy did not meet with Gang Foreman Imhof, who was the Claimant's supervisor, nor did he meet with Foreman C. B. Davis, the supervisor in charge of the back shop. Steward Donaghy testified that he did not advise any of his men not to do their job because of the weather conditions. He testified that he did not have a conversation with Claimant Allen that morning; and that he did not advise the Claimant that he did not have to perform work up on Locomotive 214. (See TR 7 and 8).

Gang Foreman Imhof testified that he assigned Claimant to set the valves on Locomotive 214 at about 7:45 A.M. Mr. Imhof went to a meeting and returned at 9:00 A.M. and again told the Claimant to set the valves. Mr. Imhof returned at approximately 10:30 A.M. and found that the Claimant was not on the assigned job. He testified that he gave the Claimant a direct order to go on the locomotive and set valves. He testified that the Claimant said "no". Foreman C. B. Davis was present at this approximate time of 10:30 A.M. when Mr. Imhof ordered the Claimant to go up on the locomotive to set the valves. Foreman Davis testified that the Claimant refused the order and offered no reason or excuse for not going up on the engine (TR 3). Machinist Connor was called as a Witness for the Claimant and he testified that the Claimant refused the order of Mr. Imhof but

explained to the supervisors that he did so because the wintry conditions made the work a health hazzard. (TR 10). The Claimant testified that he did not at anytime refuse to perform his assigned duty on Locomotive 214. (TR 4).

We find that the Claimant refused a direct order of his supervisor as charged. We find that there is no evidence whatsoever in the record that the Claimant informed his superiors, Gang Foreman Imhof or Foreman Davis at the 10:30 A.M. incident that the reason for his refusing the order was based on reliance on Steward Donaghy's 7:45 A.M. understanding with Gang Foreman D. Dean. The Claimant at no time during the trial ever contended that he acted in reliance on Steward Donaghy's understanding. The Claimant does not have the right, under the circumstances of the instant case, to substitute his judgement for that of his immediate superior.

We shall deny the claim.

A W A R D

Claim denied.

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 26th day of March, 1976.