

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7054
Docket No. 6935
2-PC-MA-'76

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, A. F. of L. - C. I. O.
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(Penn Central Transportation Company, Debtor

Dispute: Claim of Employees:

1. That Machinist R. C. Hopp was improperly assessed thirty days actual suspension from service following investigation held on December 6, 1973.
2. That the investigation was held in violation of rule 36.
3. That, accordingly, Carrier be ordered to compensate Machinist R. C. Hopp for all wages lost from November 26, 1973 to December 26, 1973.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant, Mr. R. C. Hopp, was removed from service on November 26, 1973, pending investigation in connection with an incident that occurred that date. A hearing was held on December 6, 1973, and the charges were as follows:

"Your hostile and belligerent action toward a supervisor in that you grabbed and threatened supervisor R. H. Bowen with bodily harm while on duty and on company property at approximately 8:15 P.M. or 9:00 P.M. at the West Detroit, Engine-house on November 26, 1973." (Employee Exhibit "A").

Subsequent to the hearing, the Claimant was advised by letter dated December 13, 1973, that he was being disciplined with a "30 days actual time off and the time employee held out of service to apply in the 30 days off". (Employees' Exhibit "C")

The Organization contends that the hearing was not held in accordance with the Agreement in that it was not held promptly and as such was outside the time limits. We disagree. Rule 36 does not specify a time limit for holding disciplinary proceedings. We find that the hearing was held within a reasonable period of time.

The Organization contends that the transcript was faulty as certain parts of the testimony were deleted by the stenographer. We find there is no showing of a substantial basis for this contention.

The Organization contends that the Carrier did not prove its charges against the Claimant. We find that the Carrier did prove its charges. Foreman Bowen testified, in part, (TR-3):

"While Mr. Bowen and Mr. Miscovich and Mr. Allen were in the office Mr. Hopp made the remark that . . . to Mr. Bowen . . . that he would not get away with this; that he would lay for him outside the gate and do bodily harm."

General Foreman Miscovich testified, in part, (TR-6):

"I came to the Foreman's office in the Roundhouse, asked Mr. Hopp if he had swung at Mr. Bowen. Mr. Hopp says, 'No but I grabbed him by the shirt'."

The Claimant himself testified as follows:

"Q. Mr. Hopp, did you make a statement that you would wait for Mr. Bowen outside the gate and get him?

A. No, I said someone might, sometime."

We find that the testimony of the witnesses and the Claimant's own admissions clearly demonstrates that the Claimant was guilty as charged. We find that the discipline of 30 days suspension is neither arbitrary nor excessive and we shall deny the claim.

A W A R D

Claim denied.

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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 14th day of May, 1976.