

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers AFL-CIO
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(Penn Central Transportation Company, Debtor

Dispute: Claim of Employees:

1. That there were no facts to sustain the Action of the Penn Central Transportation Company in assessing the five (5) day actual suspension and twenty-five day (25) record suspension following the investigation held on Machinist D. Rudolphy, on October 10, 1973.
2. That the hearing was held in violation of Rules 36 & 26 of our controlling agreement.
3. That the Penn Central Transportation Company reimburse machinist D. Rudolphy for wages lost and any fringe benefits, vacation time, Insurance etc., that he lost durring the five day actual suspension.
4. That this be removed from Mr. Rudolphy's record, five day actual and twenty-five day record suspension and he be made whole.

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.

Claimant was notified to report for a hearing on a charge of being involved in an illegal and unauthorized work stoppage and leaving the property without proper authority.

Subsequent to investigation, he was assessed a 60-day actual suspension.

During the handling of the matter on the property, the discipline was modified to a five (5) days actual suspension and twenty-five (25) days record suspension.

The basic factual background which gave rise to this dispute is identical to that considered by this Board in Award No. 7153, and the basis for our determination in that case controls our conclusions here.

The Claimant herein sought to explain his presence in the lunch room because of an "upset stomach." Yet, he refused to respond to questions as to whether he sought medical attention, reported his illness, etc.

For the reasons set forth in our Findings in Award No. 7153, we find no procedural errors. We find that Carrier did not present substantive evidence to show that Claimant was guilty of departing the property without proper authority. However, we find that Carrier did present substantive evidence to support the finding that Claimant was involved in an illegal and unauthorized work stoppage.

Under all of the circumstances, we are unable to find that the discipline imposed was excessive.

A W A R D

Claim denied, as stated in the Findings, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of November, 1976.