

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That Machinist Robert Tufty was unjustly dealt with when he was arbitrarily suspended from service by the Chicago and North Western Transportation Company for a period of thirty (30) days and subsequently removed from a Mechanic-In-Charge position he occupied at Sioux Falls, South Dakota and demoted to a Machinist position at the Chicago and North Western Transportation Company's Cedar Lake Shops in Minneapolis, Minnesota.
2. Because of the harsh, arbitrary and capricious nature of the discipline as assessed Machinist R. Tufty, the Chicago and North Western Transportation Company be ordered to:
  - A. Compensate Machinist R. Tufty for all time actually suspended from service.
  - B. Compensate Machinist R. Tufty the difference in pay between the Mechanic-In-Charge position he previously held at Sioux Falls, South Dakota and the Machinist's position he was demoted to and currently occupies at the Chicago and North Western Transportation Cedar Lake Shops located in Minneapolis, Minnesota, and
  - C. Compensation requested in paragraph "B" be paid Machinist R. Tufty for each and every day he is arbitrarily withheld from the Mechanic-In-Charge position at Sioux Falls, South Dakota.

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.

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AUG 25 1978

LABOR MEMBER'S DISSENT TO

AWARD NO. 7656, DOCKET NO. 7419

J. W. GOHMANN

The total Findings in this discipline case more readily portray the cavalierly handling than any amount of words:

"This Board has reviewed the entire record in this case and has concluded that the evidence supports the charge against the Claimant. The discipline administered by the Carrier also is appropriate for the proven offense. This Board, therefore, must deny this Claim."

What "evidence" supported the charge and what was the "proven" offense etc. Many contradictions were thoroughly reviewed before this neutral and other facts that definitely thrust toward and supported an innocence conclusion. All of these are ignored perhaps in the context of "ignore them and they'll go away". Such an evaporation does not occur and most certainly shouldn't be expected to in any such serious a case as discipline where the record will be carried forever by the Claimant.

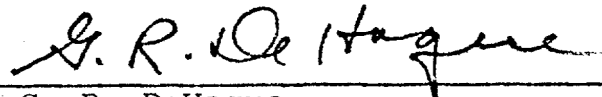
One overwhelming fact is the size of the fuel oil pipe listed as handling "25 gallons per minute" and which fact was never refuted by the Carrier but rather actually confirmed such as in their submission on Page 7. On this same page the Carrier confirms that the discharge of the alleged spill of 4,000 to 5,000 gallons "would have taken at least several hours". It was unrefuted by anyone that the Claimant left the work area at approximately ten hours previous to his return and the subsequent spill discovery. Any school kid could figure this mathematical problem as:

60 min. X 10 hrs. X 25 gals. per min. = 15,000 gals.

These exact figures were brought out on Page 9 of the hearing transcript and never denied nor even an attempt mounted by the Carrier to refute. So using these unrefuted figures it would disprove any contention that the Claimant left the fuel pump running when he left work approximately ten hours earlier.

Section 3. First. of the Railway Labor Act provides for the rights of due process in railroad employe grievances. In this instant award the brief and cavalierly denial would cause wonder and concern as to the denial of these rights.

For these reasons this vigorous dissent is directed to Award No. 7656.



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G. R. DeHague  
Labor Member

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Award No. 7656  
Docket No. 7419  
2-C&NW-MA-'78

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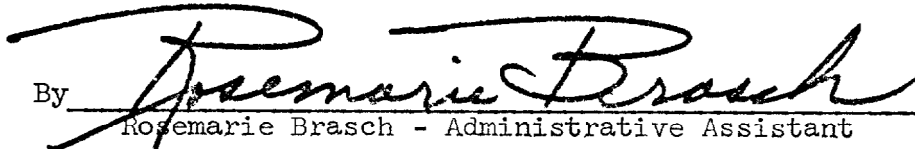
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1978.