

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis - San Francisco Railway Company unjustly suspended Machinist R. J. Agostini from service for a two-week period from July 2, 1976 through July 15, 1976.
2. That accordingly, the St. Louis - San Francisco Railway Company be ordered to compensate Machinist R. J. Agostini in the amount of eight (8) hours' pay at the pro rata rate of pay for July 2, 3, 4, 7, 8, 9, 10, 11, 14, and 15, 1976. In addition, he shall receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.

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, a six year journeyman machinist on the third shift at Carrier's Springfield, Missouri Diesel Shop, received the following letter, dated July 2, 1976:

"You are hereby notified as a result of investigation..., in connection with your being observed at approximately 6:31 a.m., June 13, 1976, sitting in a slumped position, resting your head in the palm of left hand while in the welding booth in the basement of the Diesel Shop, in violation of Rule B, as it relates to negligent or indifferent to duty, and Rule C, as it relates to employees being alert and giving their undivided attention

"to duties during their prescribed hours, of the Rule, Regulations, Safety Rules and Instructions governing Mechanical Department Employees, ... you are dismissed from service for a two week period, July 2, 1976 through and including July 15, 1976."

Claimant testified that after finishing work on a particular engine, 5:00 a.m. or 5:30 a.m., he so advised his foreman to that effect. Claimant stayed around the ramp area until 6:00 a.m. He said he had a headache, went to his locker, took two headache pills, then went and sat down in the welding booth. Claimant denied that he had been sleeping.

The Shop Superintendent testified that in the course of his usual checking of the shops, he walked through the basement and observed Claimant in the welding booth, in a relaxed position. The Superintendent walked up to the open door of the booth and stood seven to ten feet from Claimant and observed him for several minutes. Claimant was sitting in a slumped position, head resting on the palm of his left hand and his eyes were closed. Thereafter, the Superintendent left and went to the General Foreman's office and returned with a Supervisor and an Electrician. The three then repeated the same observation of Claimant. Claimant was still in the same position. They conversed with each other verifying that in their opinion Claimant was asleep and that the time was 6:30 a.m. Thereafter, the Superintendent walked around Claimant and allegedly awakened and talked with him. Claimant denied that he had any problems and that he was asleep. The latter two witnesses so testified.

The Board finds that Claimant was given a fair and impartial investigation. He was capably represented, faced his accusers and was permitted to question the various witnesses. He exercised his right of appeal.

Sufficient evidence was adduced to support Carrier's conclusion as to Claimant's culpability. Carrier's weighing of the evidence, its acceptance of the testimony of its witness in preference to that of Claimant's is held to not be error as such represented a reasonable exercise of Carrier's discretionary right. The conclusions reached by Carrier are not inconsistent with the evidence.

The discipline imposed is held to be reasonable. It was fairly assessed in the light of all the facts in this case.


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 19th day of September, 1978.