

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

Request that Machinist R. A. Hightower be returned to duty and compensated for wages lost under the provisions of Rule 34 in the controlling Agreement. Machinist Hightower suspended July 19, 1976, discharged July 29, 1976 after investigation.

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 dismissed from service, following a hearing, on the basis of the following charges: failure to install air brake equipment properly; absence without permission; and abusive language and insubordination to his supervisor.

The record indicates several conflicts in the testimony of Claimant and his supervisor, the Roundhouse Foreman. Claimant alleges that he was instructed by a machinist to do the job in question, whereas his supervisor maintains that he directed Claimant to change the valve. The foreman testified that Claimant was told to report to him when the job was finished, but Claimant maintains that he did not have any type of conversation with the Foreman prior to starting work on the assignment. The Mechanic Foreman testified that Claimant would not have been expected to work during his lunch period to complete the valve change without having been instructed to do so; the Roundhouse Foreman stated that "whenever engines are on the outbound ready track he (Claimant) is supposed to work through his lunch hour unless otherwise stated"; Claimant, as noted above, denies any conversation with the Roundhouse Foreman prior to the application of the valve.

The record is also confusing as to whether Claimant was supplied with the correct valve necessary to repair the air equipment.

The record also indicates that both Claimant and Roundhouse Foreman engaged in the use of profanity and disparaging comments after the valve was found not to be functioning.

The record further supports a finding that profanity and horseplay were indulged in both by employees and their supervisor.

The record is clear, however, that the job to which Claimant was assigned, whether by the "trouble-shooter" machinist or by his foreman, was not properly done and that Claimant, accordingly, merits some discipline on this account. Dismissal from service, however, in our opinion, constitutes an excessive penalty.

There is no evidence of a pattern of inadequate performance or unsatisfactory work by Claimant prior to this incident, nor is there any evidence of previous discipline being meted out to Claimant.

Claimant's actions in the instant situation merits strong warning and severe discipline, but one short of discharge. Claimant has been amply penalized during the period since his dismissal from Carrier's service.

The Board believes that while a heavy penalty is in order, discharge in this case is too drastic. Because of this, the discharge penalty is modified to a disciplinary layoff and Claimant is to be reinstated but without back pay.

At the same time, the Board considers its action with respect to this Claimant in the instant case as constituting due notice to Claimant that repetition of poor workmanship and use of abusive or profane language to his foreman will justly put his job in forfeit. The Board's mitigation of the discharge penalty and its injunction to Claimant to improve his work performance and attitude towards his supervisor are, in the Board's judgment, consistent with the principle of corrective discipline.

A W A R D

That Claimant be immediately reinstated in the service of the Carrier with seniority rights unimpaired, but with no compensation for the time he has been out of service.

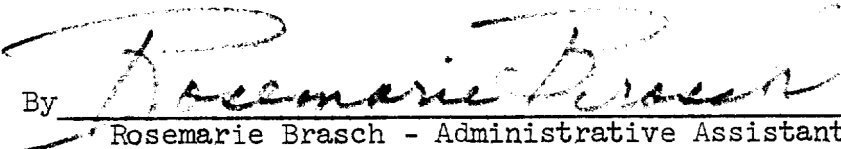
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

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Award No. 7696
Docket No. 7506
2-SPT-MA-'78

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of October, 1978.