

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

Parties to Dispute: ( System Federation No. 1, Railway Employees'  
( Department, A. F. of L. - C. I. O  
( (Boilermakers)  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Carrier violated Rule 34 of the former Reading Railroad Shop Crafts Agreement when on April 22, 1977, Boilermaker Irvin W. Bensinger was actually given a five (5) days suspension and a notation to this effect was made on his service record. The actual days of suspension were April 25, 26, 27, 28, 29, 1977.
2. That accordingly the Carrier be ordered to remove this "entry" from Mr. Bensinger's service record and that the Carrier compensate him for all lost time.

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 given a 5-day suspension and a notation on his service record for insubordination to his foreman and violation of designated Carrier's General Notice and Safety Rules.

As gleaned from the record, at about 6:40 a.m., Claimant's foreman instructed another employee to dispose of a piece of scrap steel lying on the floor of the Power Plant boiler room. Although the instruction was not directed nor issued to Claimant, he nevertheless took possession of the piece of scrap steel and threw it about 25 feet across the shop into a hole in the floor at the rear of No. 2 boiler. When directed by the foreman to pick up the piece of scrap, Claimant first proceeded to put on his work clothes and some 15 minutes after the incident arrived at the foreman's office and placed the piece of steel on the foreman's desk.

At the investigation, Claimant, who refused representation and witnesses, claimed that he "attempted to throw the said piece of steel in that receptacle which is no more than 3 feet away from No. 2 boiler". But the record shows that the container to which Claimant refers is a small square box with a trap door on the top, and that the scrap box is outside the Power House.

Claimant elected to represent himself at the hearing. He acknowledged receipt of the notice; took no exception to the charge notice at the hearing; acknowledged understanding of the General Notices and Rules mentioned in the hearing notice; and acknowledged at the hearing that the proceeding had "been held in accordance with the agreement".

The Organization's Local Chairman, who attended the hearing as a representative of the local union, also acknowledged that the hearing and investigation was held in a fair and impartial manner and in accordance with the Agreement.

The evidence produced at the hearing by Carrier was not controverted by Claimant. Claimant's behavior was unwarranted. He injected himself between the foreman and the foreman's instructions to another employee. His action in throwing the piece of scrap metal some 25 feet was in direct violation of Safety Rules and may have resulted in injury to other employees.

The Board, consequently, does not find the 5-day suspension unreasonable and sees no reason to substitute its judgment for that of the Carrier.


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 4th day of January, 1979.