

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
(
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. The Chesapeake and Ohio Railway Company arbitrarily and capriciously suspended Machinist Herbert Schoutens from service for a period of thirty (30) days in connection with investigation held on June 14, 1977.
2. Accordingly, Machinist Herbert Schoutens should be compensated for all time lost, credited for all fringe benefits attached to his employment, and his record cleared.

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 charged with leaving his assigned work area without permission; conduct unbecoming an employee of the company; and threatening bodily harm to a fellow employee, Mr. Pollice. The same charge was also directed at three other employees.

The basis of the charge was an allegation by Pollice, a machinist working on a locomotive in the Roundhouse, that four men, including Claimant, threatened him with raised hammers and in profane language, said that "They would get him" if he ever came around the Diesel House where they were employed.

The Grand Rapids Shops where the employees involved are employed, consist of a roundhouse, diesel house, car repair shop and back shop. The roundhouse and diesel house are in close proximity to each other. Employees who work in these two facilities share a common locker room and lunch room

within the roundhouse structure. During the course of a day employees regularly traverse between these two buildings to obtain tools, parts, coffee, or lunch.

On the night of the alleged incident, Claimant (and the three other employees charged with the same offenses) went from the diesel house to the roundhouse in order, they stated, to obtain hammers and other tools needed for their job. Although Carrier asserted that permission was required to go from one facility to another, Claimant's foreman testified that it was common practice for employees to get tools in the roundhouse without the foreman's permission or knowledge. Testimony was also presented that tools were kept in the supply rack in the roundhouse and that no instructions were issued by supervisors that employees were not to leave the diesel house for tools.

The Roundhouse Foreman corroborated the testimony that supplies were kept in the roundhouse and that "on occasion", diesel employees came there for supplies and tools. He also stated the roundhouse employees at times went to the diesel house for parts or supplies.

The hearing also brought out that it was not until the day after the alleged incident that the diesel house foreman instructed employees not to leave the diesel house without permission.

The diesel house foreman testified that some diesel house employees eat lunch in the diesel house, others in the lunch room, which is attached to the roundhouse; that no permission is required to go from the diesel house to the lunch room at lunch time; and that the same practice applies to coffee breaks, which on the shift involved, are usually taken at about 1:30 A.M.

With respect to the charge of "conduct unbecoming an employe of the Railroad Company", the roundhouse foreman responded in the negative to the question:

"Did Mr. Schoutens (Claimant) behave in an abnormal manner any time he was in your presence?"

Pollice stated at the hearing, when questioned by Claimant's representative, that Claimant neither approached nor threatened him; that Claimant said nothing to him; and that he "saw him at the head of the track that is all".

Pollice also testified that the threats against him were made at about 3:10 A.M. Claimant and the other employees accused indicated that they had gone to the roundhouse for the tools right after their coffee break, between 1:30 and 2:00 A.M. Still another employee, Mr. Olewinski, who was working near Pollice on the locomotive at the time of the incident testified that he heard one of the four men charged, but not Claimant, talking to Pollice at about 2:10 A.M.

The record of the investigation, in our judgment, does not support Carrier's conclusions with respect to the charges filed against Claimant. The evidence is extremely inconclusive, based on mere suspicion. There are too many discrepancies, as well as direct statements by Pollice that Claimant did not threaten him to uphold Carrier's finding that Claimant is guilty of the offenses charged. Pollice testified that he was not approached, much less threatened by Claimant; that he "never had any confrontation with" Claimant.

The Roundhouse Foreman, the four employees charged, and Olewinski, who was working on the engine with Pollice at the time, all stated that the alleged incident took place at about 2:00 A.M. Pollice, in his original submissions, and at the hearing, listed the time as 3:10 A.M.

The chain of events pointing to Claimant's alleged guilt is inconclusive. The investigation did not clearly demonstrate that Claimant is guilty of the charges levelled against him. Mere suspicion is not sufficient to prove that he committed the offenses for which he was disciplined. Consequently, we will sustain the claim.

Claimant shall be entitled to recover the loss in his pro rata rate of pay for the period of his suspension, less any compensation which he may have earned in other gainful employment during said period.

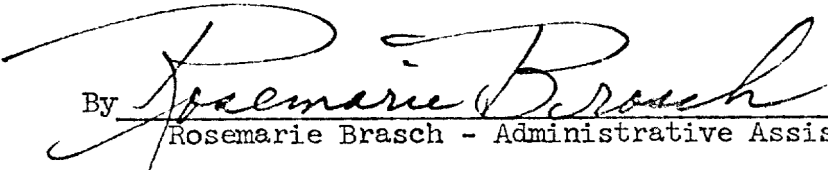
A W A R D

Claim sustained in accordance with the above Findings.

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 12th day of September, 1979.