

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

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

- 1. That the Consolidated Rail Corporation be ordered to restore Machinist Kevin Belanger to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
- 2. That Machinist Kevin Belanger, be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1 (e) of the prevailing Agreement which was effective April 1, 1976.

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.

On January 19, 1978, Claimant, K. Belanger, was assigned as a Machinist at the West Detroit Diesel facility with hours from 3:00 p.m. to 11:00 p.m. Upon arrival at the facility that day he marked off from work at 2:45 p.m. and proceeded to the General Foreman's office to pick up his pay check. One of his co-workers informed the General Foreman that the Claimant was acting strange and didn't appear to be in proper shape to perform his duties. The Foreman did speak to Mr. Belanger and believed he detected the odor of alcohol. A discussion ensued on the property and in the Foreman's office with respect to whether or not the Claimant would take a blood test. He at first indicated approval but then stated that he would take the test only from his own doctor. He denied that he had been drinking. During the conversation, the Claimant became belligerent, used abusive language concerning his opinion of the Foreman and included a veiled threat in his statements. He

was removed from service by the Foreman around 3:25 p.m. After an appropriate hearing on February 14, 1978, the penalty herein complained of was assessed on February 17, 1978. We should note that the General Foreman was unaware that the Claimant was taking the day off at the time of the disagreement. This fact, had it been known, might have prompted a different outcome to the discussions.

This Board is of the opinion that the facts in the record do not substantiate a finding that Safety Rule 4002 was violated. The general actions of the Claimant, his belligerent attitude, and abusive language, however, cannot be condoned and the Carrier was well within its rights in assessing substantial disciplinary action. Based upon the entire record, however, the ultimate industrial relations penalty of dismissal is not warranted.

A W A R D

The Claimant shall be returned to the service of the Carrier without pay for the time lost but with all other contractual rights unimpaired.

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 27th day of September, 1979.