

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Boilermakers)
 { Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That Boilermaker Roger Odom was improperly assessed a twenty (20) day actual suspension and a twenty (20), day record suspension.
2. That accordingly the Carrier be ordered to reimburse the aforementioned Boilermaker with all seniority rights unimpaired, all lost wages, Vacation and Holiday pay now in effect and any additional benefits that may be negotiated.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 28, 1978, the date of the incident giving rise to this claim, the Claimant, a boilermaker, was working over-time on the 3:00 P.M. to 11:00 P.M. shift. At or about 7:00 P.M. that date the Claimant entered the office of the Carrier's supervisor and submitted a time card for five hours of overtime pay. The Carrier's supervisor advised the Claimant that he was not entitled to the five hours pay since he had only worked between the hours of 3:00 P.M. and 7:00 P.M. Here, it is alleged that a verbal confrontation, instigated by the Claimant, took place.

As a result of this incident, the Claimant was charged, by letter dated February 1, 1978, with conducting himself in a disorderly manner by threatening bodily harm to the Carrier's supervisor.

An investigation was held on the above-cited charge and the Claimant was found guilty. The Carrier imposed a 20 day suspension as well as an additional 20 day record suspension.

It is the position of the Organization that the Carrier's action was unjust and without foundation, and that the Carrier's supervisor intended to provoke the Claimant in order that discipline could be assessed. It is the further position of the Organization that the investigation was conducted in an unfair atmosphere since the Carrier's Hearing Officer badgered the Claimant and his representative and restricted the Claimant's representative in questioning witnesses.

It is the position of the Carrier that the Claimant was guilty of the offense charged and that the discipline assessed, which followed a fair and impartial investigation, was warranted.

The verbal incident which is the subject matter of this claim is concisely summarized in one paragraph of testimony from the trial investigation record. The supervisor who was allegedly verbally threatened testified as follows:

"I was sitting in the office because everyone was out to lunch, and Mr. Odom (the Claimant) came in through the rear door, North door I believe it is, with his street clothes on and submitted a time card for five (5) hours over-time, from 3:00 P.M. to 8:00 P.M. And I told him I could not accept the time card because he would not be here until 8 o'clock, and at that time Mr. Krejci was in the office with me. Mr. Krejci left for some reason, I think to go down to the wash room, and Mr. Odom asked me if I would like to have my ass beat. I asked him if it was worth his job, and then he said, I'm the only foreman out here that would do something like that, and he doesn't like smart asses, and then he asked if I would go outside with him. Then he tore up the time card for five (5) hours and started to make a new one out and asked me how many hours I should put in. And I asked him, 'what do you think is fair?' and he asked me if he gets paid for lunch, and I said he does if he's here. Then I asked him if he needed help off the Company property. Then he said to forget what he said. He said he was leaving. That was about it."

The transcript reveals that the Claimant may have, understandably been unaware of the fact that he was not entitled to his "beans", a fifty-five (55) minutes lunch break. However, such a misunderstanding when it was corrected by the supervisor did not justify the Claimant's verbal abuse and threatening language. We are convinced that the credible evidence of record demonstrates that the Claimant did verbally abuse the supervisor and threaten him.

Even if other supervisors of the Carrier may have interpreted the Claimant's right to a lunch more liberally under the rules, the Claimant was not justified in making any threats or verbal attacks upon the supervisor who strictly interpreted the rules of the agreement. Therefore, we find that the Carrier was justified in imposing discipline and we will not disturb that judgment.

We should note, that the Carrier's Hearing Officer came dangerously close to invalidating the hearing process as a result of his belligerent, and at times adversarial, behavior. Certainly, as an investigating officer, he has the right to ask questions for the purpose of developing a full and factual record. At the same time, the Hearing Officer has the responsibility to make sure that the charged employee and/or his representative has proper opportunity to also develop a full and factual record. Although, the Hearing Officer's demeanor was less than exemplary, we do not find that his occasional expressions of belligerence restricted the development of a full factual record to the prejudice of the Claimant. Therefore, we will not reverse findings made above but should let this decision stand as notice to the Carrier that investigations in the future should be less adversarial in nature.

A W A R D

Claim denied 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1979.