

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

Dispute: Claim of Employees:

1. That Machinist J. P. Campbell was suspended for one hundred twenty (120) days.
2. That, accordingly, Machinist J. P. Campbell's record be cleared and he be cleared and he be compensated for each and every day he was suspended.

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.

After timely notice and a trial, Claimant was suspended for 120 days for reading a paper during normal working hours at 10:48 p.m. on May 11, 1978 and failure to perform work at the same time. The claimant is a machinist at the Carrier's Juniata Locomotive Shop in Altoona, Pennsylvania.

The organization's primary argument is that the carrier has not satisfied its burden of proving that the claimant actually committed the offense. The carrier asserts that there is substantial evidence supporting the charges and the claimant's poor prior work record justifies the penalty. According to the organization, the claimant's prior record was improperly considered since the record was not relied on by the carrier until the claimant's appeal was processed before the carrier's highest designated officer on January 4, 1979.

On the night in question, claimant was working the second trick from 3:00 p.m. to 11:00 p.m. While on the way to inspect an equipment breakdown, a foreman and general foreman observed the claimant standing by a desk adjacent to a water cooler. A newspaper was spread out on the desk. The two foremen observed the claimant for only a few seconds and they were more than twenty feet from the desk. There is some conflicting testimony regarding whether or not claimant was completing his production sheet at the desk. The foreman testified that they did not see any papers on top of the newspaper. The claimant said he was filling in the production sheet since he was due to go off duty in twelve minutes.

While this Board is prohibited from resolving factual disputes in the record as well as credibility issues, it is our responsibility to determine if there is substantial evidence in the record supporting the carrier's actions. The record here clearly demonstrates that the carrier has fallen short of sustaining its burden of proof. There are, to be sure, implications from the testimony of the foremen that claimant was close enough to the newspaper to be reading it, but there is no record evidence that he was actually perusing the newspaper. The carrier cannot rely on a mere scintilla of evidence to support the charges. Second Division Award No. 7237 (Roadley). The evidence proffered by the carrier must be sufficiently substantive to create a reasonable inference that the claimant's guilt is more than a hypothetical possibility. Applying this standard to the specific facts of this case, we must sustain the claim. The foremen's observations were quick (hardly more than a glance) and from a distance where the foremen would be unlikely to see a production sheet. Similarly, one foreman testified several times that claimant was only looking at the newspaper. Both foremen testified vaguely concerning the precise nature of claimant's assigned duties at 10:48 p.m. on May 11, 1978. Absent evidence that the foremen observed the claimant turning the pages of the newspaper or that he should have been in some other work area at 10:48 p.m., we are compelled to reverse the carrier's actions on both charges.

Because we have sustained this claim, we need not address the issue of the claimant's prior work record.

Claimant is entitled to 120 days of back pay at the rate of pay in effect when he served his suspension less earnings he received from other employment during his suspension.

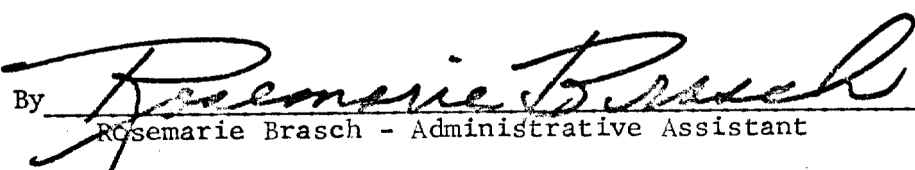
A W A R D

Claim sustained to the extent consistent with our 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 3rd day of December, 1980.