

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: { International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. The Carrier violated Rules 6-A-1 and 6-A-3 and also discriminated against Boilermaker J. P. Kiehl throughout the events leading up to his dismissal.
2. Accordingly the Consolidated Rail Corporation be ordered to reinstate Boilermaker Kiehl to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired with compensation for all time lost plus 6% annual interest, reimbursement of all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time he is held out of service.

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 5, 1979, Boilermaker J. P. Kiehl was served with a Notice of Trial to be held at 9:00 A.M., Monday, January 15, 1979 on the following charges:

1. Insubordination. Refusing direct order to go for medical attention for alleged personal injury at Harrisburg Locomotive Terminal on January 2, 1979.
2. Using profane language to Supervisor in response to a direct order at Harrisburg Locomotive Terminal on January 2, 1979.
3. Insubordination. Refusing to come to office to fill out accident papers at Harrisburg Locomotive Terminal on January 2, 1979.

Due to the unavailability of a witness the investigation was postponed until January 16, at which time it was held. Claimant Kiehl and his Union representative were present. We find that the investigation was fairly and properly conducted after proper notice and consistent with the Agreement and due process.

We further find that the charges against Claimant were sustained by clear and convincing proof. There is no evidence of probative value that Claimant should have been provoked by the instructions from either Foreman Bastardi or Shop Superintendent Rudy, yet when Mr. Rudy advised Claimant that he was subjecting himself to a charge of insubordination in refusing to follow instructions, Claimant replied, "F--- you and insubordination".

We find that discharge of Claimant was fully warranted.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of August, 1981.