

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

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

Dispute: Claim of Employees:

1. That Machinist F. E. Hicks was improperly suspended from service for ninety (90) days.
2. That accordingly, Machinist F. E. Hicks' record 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.

The claimant entered the service of the former Penn Central Transportation Company on March 17, 1975. At the time of the occurrence involved in this dispute he was assigned as a machinist in the Air Brake Shop, Juniata Locomotive Shops, Altoona, Pennsylvania. He was also a Committeeman of the local lodge of the Machinists' Organization and served as Union Representative in the Air Brake Shop.

On January 23, 1979, claimant was issued a notice of trial in which he was charged:

- "1. Direct interference with production on Friday, 1-12-79.
2. Conduct unbecoming an employee and representative of the labor union."

The trial was held on February 15, 1979, as scheduled, with the claimant present and represented. On April 3, 1979, claimant was notified of his dismissal from service. On April 6, 1979, the Local Chairman appealed the discipline to the Manager-Labor Relations. Following a hearing on the appeal, the Manager of Labor Relations agreed, on a leniency basis, to change the dismissal to ninety days suspension, with the understanding that the time that claimant had been held out of service would apply, without remuneration, toward the ninety days

suspension. The ninety days suspension was appealed in the usual manner on the property, and, failing of settlement, was referred to this Board.

A copy of the rather lengthy transcript of the investigation or trial has been made a part of the record. Based upon our review of the transcript of the trial, we find that none of claimant's substantive procedural rights were violated. Claimant was present throughout the trial and was represented. The trial was conducted in a fair and impartial manner, although it seems that numerous irrelevant items were injected.

There was substantial evidence adduced at the investigation that the claimant attempted to interfere with production in the Air Brake Shop, and attempted to instruct employes as to the amount of work they were to perform.

The Assistant General Foreman testified that at approximately 2:00 P.M., January 12, 1979, his foreman, R. J. Osmolinski approached him about a "production problem"; that the union man (claimant) was protesting in an indignant and belligerent manner about over demanding production of a machinist. In a meeting in the Assistant General Foreman's office, at which the claimant, the involved machinist, and Foreman Osmolinski were present, the Assistant General Foreman says that he attempted to ask the machinist what the trouble was and that claimant was behaving in an erratic manner; that he informed the machinist that a time study had recently been made and the approximate time per valve was under six minutes; therefore, he should have no trouble getting 80 per day, at which time claimant told the machinist that 80 was too high and that he should only get 30. Assistant General Foreman then told both men to go back to work, that management sets production quotas.

Without attempting to detail all the evidence in the trial, or investigation, suffice it to say there was substantial evidence that claimant did attempt to tell the employes how much work to produce and that his actions toward supervisory personnel were reprehensible, to say the least.

The Carrier has the right to establish fair and reasonable standards, and this Board lacks the authority to direct the Carrier's operation in any manner.

The Carrier has also called attention that in contracts of employment there is an implied condition of loyalty by an employe to his employer. The Carrier cites the text of 56 Corpus Juris Secundum, page 430, Master and Servant, reading:

"One who asserts an interest, or performs acts adverse or disloyal to his employer commits a breach of an implied condition of the contract of employment which may warrant discharge..."

The Board adheres to this principle. See Third Division Awards 2496, 10930, 15932, 11911, 19811, 23151 and Award 1 of Public Law Board No. 2787.

While there were conflicts in testimony at the trial, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses.

Based upon the entire record, it is our belief that the Carrier was liberal in reducing the original dismissal to a 90-day suspension. The Board will not interfere with the 90-day suspension.

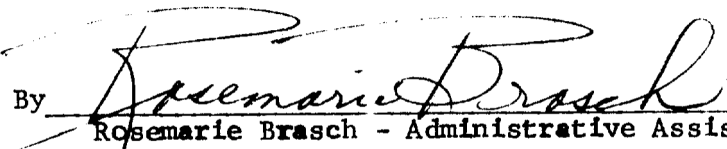
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1982.