

The Second Division consisted of the regular members and in addition Referee Albert A. Blum when award was rendered.

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

Dispute: Claim of Employee:

1. That the Consolidated Rail Corporation be ordered to restore Machinist E. Bullard 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 E. Bullard 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 7-A-1 (e) of the prevailing Agreement effective May 1, 1979.

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.

Following a hearing and investigation, Machinist E. Bullard was discharged from service of the Carrier. The charge for which Claimant was found guilty was set forth in the Notice of Hearing as follows:

"Leaving Company property on February 22, 1980 at approximately 9:00 p.m. without permission.

Insubordination in that you failed to follow the instructions of your immediate supervisor, Mr. Richardson on February 22, 1980 and remove, inspect and replace transition motor works on Locomotive No. 6668."

The record shows that the Claimant's Foreman testified that he directed the Claimant at about 8:00 p.m. that Unit 6668 required switch inspection and bolt checking and that the Shop Superintendent would inspect the work. At about 9:00 p.m., the Foreman checked the unit and found no evidence of work having been done on it. He then began to look for the Claimant and could not find him.

The Petitioner claims that the Carrier's charge that the Claimant had left the property without permission is not justified in that the supervisor had not looked in the area where the Claimant was making telephone calls. Moreover, for a time, he had worked on Unit 193. The Petitioner also declares that when the Foreman picked up the Claimant's time card he did not put any notice in the rack, and, as a result, the Claimant believed a fellow worker had taken care of it. Moreover, the Petitioner feels that the charge that the Claimant had not done the assignment was not proven because the supervisor had only visually examined the work but had not physically taken the piece out to check.

Examination of the evidence indicates that the Carrier was justified in assuming that the Claimant was not on the property. The Petitioner does not dispute that the Claimant's supervisors had themselves looked for him for about 45-60 minutes, paged him, and asked other people for his whereabouts. The Claimant's response is that he was somewhere else on the property (unseen by anyone insofar as the testimony was concerned) making telephone calls. Moreover, he assumed that his timecard was taken care of by a fellow worker. On the one hand, the Claimant offers two improper acts as evidence that he was on the property - namely, that he was making personal telephone calls for a long period of time without permission and unseen by anyone, and that a fellow worker improperly took care of his time card which he did not check. On the other hand, the Carrier offers as evidence that the Claimant was not on the property their unchallenged claim that his supervisor had searched for him for a long time, had him paged, and asked for him. In addition, the Claimant admits that his foreman told him to change switches but that he thought someone else had changed them.

To overrule the Hearing Officer's decision in this case would require us to feel that the Carrier had not met the criterion of "burden of proof" as spelled out in a history of past awards. Given the fact that a thorough search was made for the Claimant by the Carrier, and given the fact that the Claimant never asked for his time card at the end of the day, the Carrier has met any reasonable assessment of what burden of proof means.

The second question is whether the Claimant had been told to work on 6668. There was the unchallenged evidence that the Claimant had been so told, that he had not done the work (he had assumed that someone else had done it), and that two expert supervisors, through a visual examination, believed that the work was not done.

Thus, the evidence indicates that the Claimant did not do the work assigned to him and that an adequate search had been made for him plus his failure to punch out gave adequate proof to his supervisors that he was not at work. As a result, the Claimant was justifiably discharged - particularly given his past record of five suspensions (including three for being away from the work area) since April 1979.

A W A R D

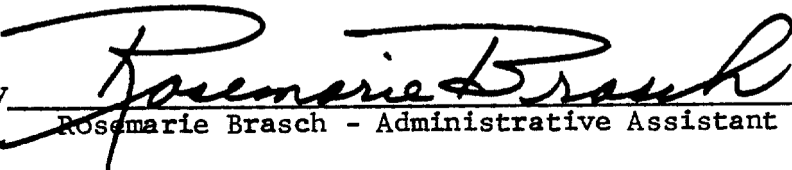
Claim denied.

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Award No. 9111
Docket No. 9230
2-CR-MA-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of June, 1982.