

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 Employees:

1. That Machinist J. W. Gentry, Man No. 538030, was held for trial on July 3, 1980.
2. That, accordingly, Machinist J. W. Gentry's 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.

An altercation took place on the morning of Tuesday, June 24, 1980 between the Claimant, Machinist J. W. Gentry, and Foreman C. E. James at about 10:45 a.m. The Claimant went to Superintendent B. H. Brandimarte's office to report what had happened. He, then, returned to work. At about 1:30 p.m., the Claimant was removed from service. The altercation had started when the Claimant entered the wheel shop and was told by Foreman James to leave. This led to an argument and eventually to a physical altercation.

The Organization's posture is, first, that what happened should not have resulted in the Carrier removing the Claimant from service at 1:30 p.m. since his activities were not detrimental to anyone. Moreover, the Organization does not feel that the Claimant was responsible for what happened. The Foreman involved had a history of altercations with other employes; he requested a bump back to the Machinist's craft after this dispute; he had started the events on June 24, 1980 by telling the Claimant "to get the Hell out of the Shop"; he did not know how to discipline an employe properly; and that he struck the Claimant first and that the Claimant's response was defensive in nature.

The Carrier's position is that the Claimant had been told by Foreman James earlier not to enter the wheel shop; and that when he was told again by the Foreman to leave, the Claimant engaged in a shouting match with Foreman James which eventually resulted in the physical altercation.

The one fact that is clear is that the Claimant had been told by Foreman James not to enter the wheel shop and he had done so, regardless of the justification. But a supervisor has some responsibilities too if an employee disobeys that instruction. He does not curse at him, swear at him, and then push him. All of the evidence indicates that Foreman James was the instigator of the violence. To punish the Claimant for getting his body in the way of the Foreman's push is to equate the victim and the victimizer, particularly in this case when the person starting the violence was a supervisor.

The burden of proof needed for the Carrier to justify the suspension of the Claimant for six days was not met in this case and he should be made whole for the six (6) days he was out of service.

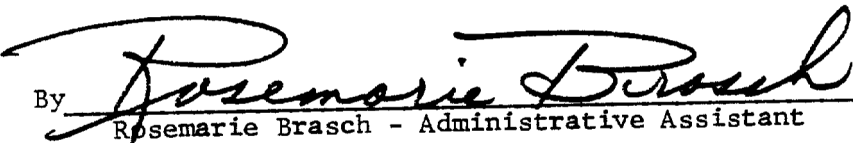
A W A R D

Claim sustained.

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.