

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

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

Dispute: Claim of Employees:

1. That Machinist R. C. Johnson III was suspended for One Hundred Twenty (120) days under date of October 19, 1979.
2. That, accordingly, Machinist R. C. Johnson III'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.

The Claimant in this matter was suspended for one hundred twenty (120) days. This discipline issued because on August 6, 1979, the Claimant allegedly acted in an insubordinate manner and attempted to destroy company property.

A careful review of the transcript disclosed that:

1. The Claimant, on August 6, 1979 was employed as a mechanic at the Carriers' Juniata Truck Garage. And, that on the date in question he was working second trick.

2. That at approximately 4:45 P.M. the Claimant lost control and was "shouting and yelling" at a parts man that was on the property to deliver some automotive parts. The delivery man was checking a truck to determine which part was needed when the Claimant began his tirade. During this incident the Claimant became loud and abusive. His conduct prompted John Harpster, the employee in charge of the garage to call Mr. F. R. McClellan, General Foreman Maintenance to come over to the garage because one of the employees was out of control.

3. When Mr. McClellan arrived he found the Claimant under a truck. At that point, he asked the Claimant if there was some problem. The Claimant bluntly stated

that he did not want to discuss the matter with Mr. McClellan.

4. Mr. McClellan advised the Claimant that he had a right to file a grievance if he felt something was going on in violation of the Union Contract, but that he was not to create problems in the shop.

5. At this juncture the Claimant followed Mr. McClellan into the office and was going to sign out. The Claimant did sign out after he had been told that only his foreman could sign the card. The Claimant signed his own time card, made a one hour mistake in the time and dared anyone to change what he had done. (The hour error was in the company's favor which shows how upset the Claimant obviously was at this time).

6. Mr. McClellan instructed the Claimant to leave the property. The Claimant had signed off and had no further business in the garage. This request was ignored.

7. The Claimant did not leave and instead made a request to use the phone to call his Union representative. He was allowed to do so. Following the phone call the Claimant remained in the garage, again ignoring the order to leave.

8. During the phone conversation, the Union representative Mr. McMullen talked to both the Claimant and Mr. McClellan. When the call was over the Claimant made a number of racially derogatory remarks.

9. The Claimant next went into the Welfare room to change clothes. While in this area he slammed a lunch table onto the floor. Following this he stated that he was going to get some of "his people and come back". The Claimant did not follow through on the threat.

10. There was also testimony supporting the conclusion that in his anger the Claimant threw an object at the office where Mr. Harpster was sitting.

These factual conclusions are based on the testimony of Mr. McClellan, Mr. Claar, Mr. John Harpster, all Carrier witnesses and the written statement of the delivery man, Mr. Ebersole. The Organization correctly points out that Mr. Ebersole's statement is hearsay. However, the avowed goal of an investigation is to bring all facts to light, therefore, hearsay may be considered. In this case, the content of the statement was supported by eye witnesses testimony received at the hearing. Such a circumstance allows the statement to be considered. Moreover, the charges do not hinge on the statement alone.

One of the charges against the Claimant is insubordination. Insubordination is defined as, "(A) willful disregard of express or implied directions of the employer and refusal to obey reasonable orders." MacIntosh v. Abbot, 231 Mass. 180, 120 N.E. 383. The facts in this matter clearly show that the Claimant was insubordinate. He blatantly ignored Mr. McClellan's directions to leave the property. In addition, the Claimant's overall conduct and demeanor, as described throughout the transcript shows that on August 6, 1979 the Claimant was rebelling against any directions either express or implied emanating from his employer. While the Carrier officer used a different definition of insubordination, we are comfortable with the idea that on August 6, 1979, the Claimant's conduct between 5:05 p.m. and 6:05 p.m. was indeed insubordinate and

showed a conscious disregard for any authority figure, including his own Organization representative.

As to the second charge, attempted destruction of company property, the record is equally clear. Two witnesses saw the Claimant, in a fit of rage, pick up a table and "slam" it to the ground. This action was taken in a fit of uncontrolled anger. There can be no doubt about the proof of the second charge.

Relative to charge two, we were somewhat skeptical about whether such action would really destroy the table. This was cleared up when the Claimant's representative was questioning Mr. Claar:

"Q. Do you feel that being the size of this table and him lifting it eight inches off the floor, and estimated eight inches, that this hurt this table in any manner?

A. Well, if you know anything about wood construction table, especially a long , heavy table, I've done it myself on my own table, on my own picnic table--lifted the top up and loosened the whole structure, ripped the whole structure loose by lifting it by the top."

On this point, the record is clear.

A one hundred twenty (120) day suspension seems a little severe. However, the record contains substantial evidence to support the charges. And, given that fact and the fact that a review of the transcript shows that the hearing officer conducted a fair hearing; and the fact that the witnesses testified in a forthright and candid manner; and that the Organization skillfully cross-examined all persons takes this matter out of our hands. The following rule set out in Third Division Award No 5032 (Parker) must be adhered to:

"***Our function in discipline cases is not to substitute our judgement for the company or decide (sic) the matter in accord with what we might or might not have done had it been ours to determine but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Company and we are not warranted in disturbing it unless we can say it clearly appears from the record that its action with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion.***"

A W A R D

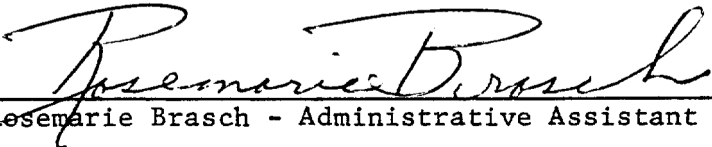
Claim denied.

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Award No. 9283
Docket No. 9198
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 4th day of August, 1982.