

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That the Carrier improperly dismissed Machinist G. R. Forgit (hereinafter referred to as Claimant) on February 17, 1981.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage and benefit loss.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, G. R. Forgit, a Machinist, has been in the Carrier's service since March 12, 1975. On January 22, 1981, he was working the third shift, 11:00 P.M. through 7:00 A.M., at the Carrier's West Colton, Locomotive Maintenance Plant. As a result of events transpiring between 11:49 P.M. and 2:30 A.M., the Claimant was charged with being insubordinate, quarrelsome, using vulgar language, and was removed from service. An investigation was held on February 10, 1981, and the Carrier subsequently dismissed the Claimant for violation of Rules 801 and 802.

The Organization views the Claimant's dismissal as improper. Specifically, the Organization protests the Carrier's refusal to grant a postponement of the February 10, 1981, investigation because of the Claimant's hospitalization. Notwithstanding this unreasonable action, the Organization asserts the Claimant went off the clock at approximately 12:26 A.M., and there is no evidence to support the charges he was insubordinate and used vulgar language. Rather, the Organization argues the Claimant was the victim of a deliberate provocation when he was refused his paycheck and told he would have to wait around in a nearby coffee shop until 3:00 A.M. and then return to the property to pick up his check.

The Carrier believes the Claimant was given every opportunity to go to work before he clocked out and admits the Claimant was "home free" at this point in time. However, the Carrier asserts the Claimant exacerbated the situation by demanding his paycheck and continuing to defy authority which culminated with his resort to vulgar and profane language.

The Organization's assertions are of a serious nature, but are not supported by the evidence before this Board. While it is factual a postponement was requested and correspondingly denied, we find no basis to conclude the Hearing Officer's ruling was improper. Despite the allegation Claimant was hospitalized, no documentation was presented nor was it shown the claimed disability of the Claimant prevented a more timely request for a postponement.


There is no question the Claimant did clock out shortly before 12:30 P.M. on the night in question. This Board, however, cannot overlook his actions. Undeniably, the Claimant performed no work in a one and one-half hour period after reporting to work. His asserted concern over working alone could not possibly relieve him of the duty to obey his instructions. Nevertheless, he was given the opportunity to avoid the consequences of his refusal to follow instructions. The Claimant opted to go off the clock, thus avoiding an immediate charge of insubordination. In so doing, the Claimant was not wrapped in immunity. Even if this Board wholly accepted the charge, the refusal to give the Claimant his check before 3:00 A.M. was incorrect, it did not excuse his subsequent conduct. Over a two hour period the Claimant continued to defy Carrier representatives through his refusals to leave the property and his defiant demands for his paycheck. This defiance culminated in vulgar expletives being addressed to his supervisors. In conclusion, this Board is satisfied the record establishes the Carrier's actions are supported by substantial evidence, and we will not disturb the conclusions reached.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1983.