

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
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

Claim in favor of Machinist H. R. Vaughns at the applicable pro rata rate of pay for the days of his regular assignment commencing November 4, 1980 and extending through December 3, 1980, due to the Company improperly removing him from service, contrary to Rule 26 of the controlling Agreement effective January 1, 1957, as amended.

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 employes 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.

Machinist H. R. Vaughns, the Claimant, with seniority as of June 24, 1971, was issued a thirty (30) day suspension as a result of an incident which took place on November 4, 1980, involving another employe. The Organization protests the discipline and asserts the record establishes that, prior to November 4, ill feeling existed between Claimant and Carman Clark. The Organization contends that Carman Clark precipitated the table shoving incident by his actions in the parking lot.

The Claimant was notified on the day of the incident that a formal investigation would be held for the purpose of determining his responsibility, if any, in turning over a table in the safety assembly roundhouse office, which struck Carman Clark injuring his leg.

The record establishes an incident did take place the morning of November 4, 1980, involving Claimant and Carman Clark. Both the Claimant and Clark testified at the hearing. Clark describes the Claimant as the aggressor who kept pushing the table while he, Clark, simply was the victim. Two witnesses describe the scene differently and clearly state that Carman Clark actively shoved the table back towards Claimant.

We uphold Carrier's finding that a quarrel took place on November 4. We, however, find that both the Claimant and Carman Clark actively participated in shoving the table back and forth and that, by his racial slurs and participation in the struggle, Carman Clark was equally causative of his own injury.


The work place cannot be a battleground where personality conflicts are solved by fighting or verbal abuse. This Board views the actual events of November 4 as overstated, but, under long established precedent, will not interfere with the Carrier's assessment of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984.