

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers - AFL-CIO
(Southern Pacific Transportation Company
((Eastern)

Dispute: Claim of Employees:

Grievance - And, request for removal of 60 demerits assessed from the personal record of Machinist C. H. Berger, III, on alleged charges arbitrary to the controlling Agreement.

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.

Claimant was employed as a Machinist at the Carrier's Locomotive Maintenance Plant, San Antonio, Texas. Claimant was working the 7:00 a.m. - 3:00 p.m. shift on April 16, 1982. The record indicates that as a result of Claimant's work performance on that date, he was charged on April 20, 1982 with misconduct, willful disregard and negligence affecting the interest of the Carrier; indifference to the performance of duty; and failure to remain at his post of duty and devote himself exclusively to his duties. As the result of a hearing held on May 19, 1982, Claimant was found guilty and his personal record assessed 60 demerits for violations of Rules 801, 802 and 810 of the rules and regulations governing Mechanical Department Employees, the pertinent part of which provide as follows:

"Rule 801.Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

Rule 802. Indifference to duty, or to the performance of duty, will not be condoned....

Rule 810. Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority. They must not engage in other business which interferes with their performance of service with the Company unless advance written permission is obtained from the proper officer..."

The Organization maintains that the record demonstrates Claimant and his work partner were attempting to carry out day-to-day instructions, and that the Carrier failed to prove the rule violations as a result of Claimant's failure to complete the change of a power assembly as assigned. The Organization also maintains that the charges against Claimant were merely harassment on the part of the Supervisor. The Carrier argued that the task assigned Claimant could be expected to be completed in a 4-6 hour period of time, that Claimant had left his work area and that no report of defective equipment was made until the very end of the Claimant's shift.

The record reveals that the assignment to change the #12 power assembly was given to Claimant and his co-worker between 7:00 and 7:25 a.m. on April 16, 1982. There is some dispute as to whether another task necessitated completion prior to the #12 power assembly. Even assuming this prior assignment needed completion, the testimony of Claimant's co-worker indicates this task was completed by 9:30 a.m.

It is urged by the Organization that a piece of equipment used to lift the assembly into position referred to as "the iron hand," was defective. The evidence upon the record reveals that although there was some leakage and pressure difficulties with the equipment, it did not prevent the operator's ability to use the tool. The Claimant's co-worker on the assigned task responded to the hearing officer when questioned about difficulty with the iron hand as follows:

"Q. Then is the ability of your understanding of the iron hand and it's, use the leak did not actually affect your ability to operate the tool?

A. No."

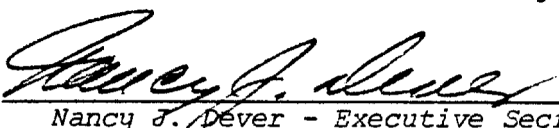
Claimant by his own admission was not at his assigned task on the #12 assembly between 1:40 p.m. and 3:00 p.m. on the day in question. Based on the entire record, Claimant's uncorroborated explanation that he used this period of time to verify the correctness of the material already used in the applied #12 assembly provides no basis for this Board to interfere with the action of the Carrier in its assessment of 60 demerits.

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 11th day of July, 1984