

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

Claim in behalf of Machinist J. M. Black due to Carrier's violation of Rule 24 of the controlling Agreement.

1. Suspended without written notice.
2. Charged with alleged violation of Carrier's Rules 801 and 802, not a precise charge.
3. Pay for all time lost, commencing 10:00 A.M., July 31, 1980, including all overtime for which he would have been available had he not been unjustly dismissed.
4. Reinstatement of all negotiated rights:
 - (a) Seniority
 - (b) Vacation
 - (c) Railroad Retirement contributions
 - (d) Insurance premiums
5. Additional compensation for vacation pay not paid on termination.
6. Make-up of shortage of prior payment at the rate of \$10.29 per hour instead of \$10.22.
7. Ten percent (10%) per annum interest until claim is settled.

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 subject to an investigative hearing on the charges of violating Rules 801 and 802 when he "allegedly became insubordinate and quarrelsome in connection with" his duties as a Machinist on August 8, 1980.

Rule 801 reads, in pertinent part, as follows: "Employees will not be retained in the service who are...insubordinate,...quarrelsome,...".

Rule 802 reads in part:

"Courteous deportment is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden...."

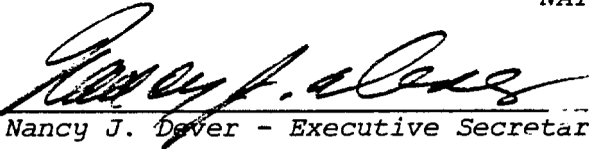
The Organization, in its claim and in the claim handling procedure, raises a number of procedural issues. One is that the Claimant was suspended at the time of the incident leading to his trial "without written notice". Rule 24-1 provides, "suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule." There is no stated requirement that notice of suspension be made in writing. The Organization also claims that the charge was not sufficiently precise, as required by Rule 24-2. The charge refers to a specific incident as well as to rules, and the Board finds this meets the requirements of Rule 24-2. The Organization also objected to the hearing officer's failure to hear testimony of two witnesses brought by the Claimant. Since the hearing was concerned with developing the facts concerning a particular incident on August 8, 1980, the Board does not find it unduly improper that the hearing officer refused to hear testimony from two employees identified solely as "character witnesses" on behalf of the Claimant.

As to the evening in question, the record shows that the Claimant was insubordinate in his use of abusive words and discourteous conduct with supervisors. In connection with this, the Claimant gave every indication at the time that he was walking off the job, perhaps permanently, although this move toward "resignation" was apparently of brief duration. The Carrier need not tolerate such type of conduct from employees, striking as it does at the heart of the employer-employee relationship. Particularly in view of the Claimant's 19 years of service, however, the Board finds that dismissal was an arbitrary and overly severe penalty.

A W A R D

Claim sustained to the extent that the Claimant shall be reinstated to his former position without back pay or retroactive benefits but with seniority unimpaired.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of October 1984.