

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Seaboard Coast Line Railroad Co.

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling Agreement, on March 9, 1981 when it held Machinist T. E. Harvin out of service pending an investigation held on March 16, 1981.
2. That the Seaboard Coast Line Railroad unjustly suspended Machinist T. E. Harvin for 60 days beginning March 10, 1981 through May 8, 1981.
3. That accordingly the Seaboard Coast Line Railroad be ordered to compensate Machinist T.E. Harvin for all pay lost as a result of the above 60 days suspension.

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, T. E. Harvin, was employed by Carrier, Seaboard Coast Line Railroad Company, on December 10, 1966, and currently holds the position of Machinist. On Monday, March 9, 1981, Claimant was working as regularly assigned in the wheel-loading area at Hialeah Shops.

On March 9, 1981, Claimant was sent written notice to attend an investigation on March 16, 1981, in connection with the following charges:

"You are directed to attend investigation scheduled to be held in office of Assistant Master Mechanic, Hialeah, Florida at 1:30 p.m., Monday, March 16, 1981, to develop facts and determine responsibility, if any, in connection with possible violation of Seaboard Coast Line Railroad Company Rules and Regulations of the Mechanical Department, Rule 12, that portion reading '...vicious or uncivil conduct, insubordination...will subject the offender to summary dismissal.'; also, Rule 176 of the Seaboard Coast Line Railroad Company Safety Rules for Mechanical Department Employees. These possible violations having occurred in the Hialeah Car Department at approximately 10:00 a.m., Monday, March 9, 1981, when you failed to comply with instructions issued by Mr. R. D. Ratzmann, your supervisor, and striking him on

"the face with your hand resulting in slight laceration to his lower lip area. You may have representation if you so desire in accordance with the Agreement under which you are employed, and you may arrange to have present any witnesses who have knowledge of this matter. At the conclusion of the investigation your personal record file will be reviewed."

Rule 12 of Rules and Regulations of the Mechanical Department states:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, wilful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal."

Rule 17 of Safety Rules for Mechanical Department Employees states:

"Profane, indecent or abusive language is prohibited."

After the formal investigatory hearing, Claimant received a sixty-day suspension, effective from March 10 through May 8, 1981.

The Organization contends that the Carrier has failed to prove the charges against the Claimant. The Organization argues that the Claimant did in fact comply with the verbal instructions of Foreman Ratzmann, and that Ratzmann wrongfully assumed that the Claimant had not followed those instructions.

The Organization contends that in the conversation during which Ratzmann received the laceration, the Claimant was moving his hands and arms to accentuate his verbal remarks. The Organization contends that any physical contact between the Claimant and Foreman Ratzmann was accidental.

The Organization further argues that Carrier wrongfully removed the Claimant from service pending the formal investigation of the hearing. The Organization argues that the Claimant should be made whole for all pay lost as a result of the suspension.

The Carrier argues that the evidence presented during the investigation established that the Claimant's conduct and language on March 9, 1981, was uncivil, abusive, and violated the cited rules.

The Carrier contends that the testimony adduced at the hearing shows that the Claimant swore at Foreman Ratzmann, telling him to get off "his mother-fuckin' back, and don't be riding me". The Carrier further contends that the Claimant then struck Ratzmann in the mouth, causing his lip to bleed.

The Carrier argues that it acted properly in suspending the Claimant pending an investigation into the incident, and the discipline that was administered to the Claimant was lenient. The Carrier contends, therefore, that the claim lacks merit and should be denied.

This Board has reviewed all of the evidence in this case, and there is no question that Claimant violated the Carrier's rules by his actions on May 9, 1981. The record is clear that the Claimant arrived to work 1-1/2 hours late on that day; had to be repeatedly told by his foreman to go to work and still did not; engaged in a confrontation with his Supervisor and used abusive language toward his Supervisor, as well as engaged in a physical altercation with his Supervisor. This behavior on the part of the Claimant clearly subjects him to discipline.

Although the Organization argues that the Carrier had no right to hold Claimant out of service pending the investigation, it is clear that Rule 32 grants the Carrier the right to suspend an employee in proper cases pending a hearing. Certainly, cases involving physical altercations with supervisors are those types of cases which are contemplated by the rule. Hence, there was no violation by the Carrier.

Finally, this Board has had an opportunity to review the penalty imposed by the Carrier. It is fundamental that this Board will not substitute its judgment for that of the Carrier in the determination of appropriate discipline unless the action of the Carrier is arbitrary, capricious, or in bad faith. This Board notes that the Claimant has been employed for nearly 15 years prior to the incident in question and had never before been suspended for any rule violation. A 60-day suspension is an extremely severe and arbitrary penalty for such a long-term employee with a good record. Claimant will get the message that his behavior is unacceptable with a much more reasonable, less arbitrary penalty. This Board hereby reduces the suspension to 30 days and orders that the Claimant be made whole for all lost wages and benefits resulting from the arbitrary penalty.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1985.