

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(International Association of Machinists and Aerospace
Workers

Parties to Dispute: (Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad (formerly Seaboard Coast Line) violated Rule 32 of the January 1, 1968 Agreement between the Carrier and the International Association of Machinists and Aerospace Workers when it unjustly suspended Machinist R. L. Crook from service on January 20, 1983 through February 20, 1983, account alleged insubordination.

2. That, accordingly, Carrier be ordered to compensate Machinist Crook in amount of 25 days pay at the pro rata rate and make claimant whole for any other pay or benefits lost as result of his suspension from the service.

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.

The Claimant, R. L. Crook, a machinist with the Carrier and in service since January 25, 1980, was given a 25 workday suspension for insubordination as a result of an investigation held on January 31, 1983.

The Claimant was told to clean out his locker and transfer the contents to a new locker at 7:30 p.m. on January 20, 1983. At 8:35 p.m. the Claimant moved the locker in question to a new location. The locker was returned to the old location and the Claimant was asked to turn over the key by his Supervisor, but he refused. Finally, the Carrier was forced to cut the lock from the locker with a bolt cutter.

The Organization argued the Claimant was justified in his action because the new locker was not big enough to hold his tools. They note that there is a past practice of employees exchanging lockers by themselves, and the Carrier gave no consideration for the Claimant's need to protect his personal property and company tools contained in the locker. The Organization stated the Claimant had no intention to disobey and was getting ready to comply. There was no specified time for the Claimant to comply with the order, and the only reason he refused to give up the key was that his personal property was contained in the locker. It is not improper for an employee to refuse an order under those circumstances. The demand for the key is not reasonable without the presence of the Claimant. Finally, the Organization argued that Rule 32 was violated, in that the Claimant was not given a fair hearing, and he was suspended prior to the investigation.

The Carrier argued this was a simple case of insubordination. The Claimant was given a reasonable order, which he failed to carry out. There are no mitigating circumstances, and the discipline was warranted. The Claimant was present while the locker was opened, and because of the refusal of a proper order, the Carrier had to use a bolt cutter in order to get into the locker. The basic principle is that, if you have a problem with the Carrier's action, you follow legitimate orders and then file a grievance. Finally, the Carrier contended that the Claimant had been given a fair investigation and that suspensions prior to investigation are provided for in Rule 32.

The Board finds that the Claimant was given a fair and impartial investigation and that Rule 32, second sentence, provides as follows: "Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this Rule." With respect to the infraction itself, there is a long line of cases, both before the Second Division and other Divisions, concerning insubordination. The General Rule is, if given a proper order, employees should follow the order, and if they have a problem, grieve it later. Much is made in this case of the Claimant's presence or non presence at the opening of his locker. To this Board the matter is moot in that it was the Claimant that created the situation by his failure to follow his Supervisor's order in the first place, and that order was to clean out his locker and move his items to another locker. Again, whether or not the Claimant had an understanding with another employee to change lockers does not negate the direct order of his Supervisor. It is generally recognized that the only excuse for insubordination would involve safety. If the order would place the Claimant or another employee in physical danger, then employees are generally found to have good cause for refusing to carry out that order. This situation does not exist in this case.

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2-SSR-MA-'85

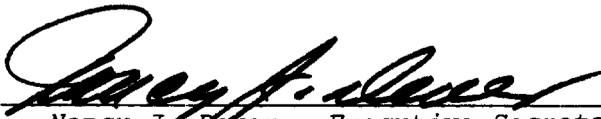
We come finally to the appropriateness of the penalty in this matter. The Carrier assessed a 25 day actual suspension which is a substantial penalty given the record of service of the Claimant and the fact that the Claimant was performing the Carrier's work while not carrying out the order of the Supervisor. However, the penalty is not so out of line as to cause the Board to substitute its judgment for that of the Carrier. Therefore, we will deny the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985