

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10629
Docket No. 9212
2-CR-MA-'85

The Second Division consisted of the regular members and in addition Referee Thomas A. Bender when award was rendered.

(International Association of Machinists and Aerospace
Workers, AFL-CIO
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Allen Elias to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.

2. That Machinist Allen Elias be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and were lost during this period, in accordance with Rule 7-A-1 (e) of the controlling Agreement which was effective May 1, 1979.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

By decision of this Division, Award 9231, July 22, 1982 the Claimant's termination by Consolidated Rail Corporation was affirmed. Following rejection of his case the Claimant filed an appeal in the Federal District Court, Northern District of Ohio.

The Claimant's prayer for relief sought a remand to the Second Division for reconsideration. Before the matter could be heard or decided, Representatives of Consolidated Rail Corporation and the Claimant agreed to have the Court Remand the case to the Second Division because of an alleged failure to notify the Claimant of the Hearing before this Board.

These provisions of this Court's Order were fully complied with on August 30, 1985.

On August 30, 1985, the Claimant, Allen Elias, personally and by counsel appeared before the Division. Mr. Elias's counsel carefully, thoroughly and thoughtfully reviewed and reargued the original case. Pursuant to the provisions of the Railway Labor Act and the Rules of this Board no additional evidence was presented, the Claimant being confined to the record made on the Carrier's property. While such a procedure may seem foreign to some advocates, it is a system which has well served the Railroad Industry for many years and is one universally understood by Carriers and Employee Representatives.

The original Award in Mr. Elias' case carefully examined the following matters:

1. Insubordination
2. Use of profane language to a Supervisor
3. Threatening a Supervisor with bodily harm
4. Vagueness of the Notice of Investigation

At the rehearing, the Claimant's counsel pointed out some conflicts in the investigation record. Thus, this Board carefully reviewed not only the original Award but the underlying record as well. Notwithstanding the points raised, we are satisfied that the record contains substantial evidence which supports the conclusions contained in Award 9231; and in turn, the discipline meted out by the Carrier.

Our original actions in this matter were predicated, inter alia, on Second Division Award 6456 which provides in relevant part:

"There was substantial evidence to support the hearing officer's conclusion. Many prior awards have established that the policy of this Board is to leave undisturbed a decision based on substantial evidence produced at a hearing which has been fairly conducted after proper notice."

Referee Bergman's words represent only one such statement of a long standing, well recognized precept.

A W A R D

1. Second Division Award 9231 is affirmed.
2. Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.