

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(International Association of Machinists and Aerospace
(Workers
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to remove the five (5) day actual suspension assessed Machinist J. E. Goot, from his service record.

2. That the Consolidated Rail Corporation be ordered to compensate Machinist J. E. Goot for five (5) days pay at the prevailing Machinist rate of pay in accordance with Rule 7-A-1 (e) of the prevailing Agreement 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 employe 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.

The Claimant was given notice of a trial in connection with his failure to perform duties as a Machinist when he was assigned to apply the exhaust stack to Unit CR 2800 at about 12:10 AM, February 6, 1983 and approximately two and one-half hours later had failed to do so.

Following the trial the Claimant was assessed a five-day suspension.

The record is replete with charges and counter charges with the Carrier's Foreman testifying that the charges are factual and the Claimant and his Representative strongly asserting to the contrary.

As we have held in numerous discipline cases heretofore, we do not resolve conflicts in testimony. The credibility of testimony is, therefore, at issue.

While the conflict is sharp, the Board has uniformly held over a long period of time that the credibility of those testifying, their demeanor and the weight given their testimony is for the determination of the Hearing Officer.

In order to sustain this Claim we must find that the Organization has proved that the action taken by the Carrier in this case is arbitrary, capricious and an abuse of discretion vested in management. The employee and/or his Representatives have not produced substantial evidence of probative value that the Carrier was arbitrary, capricious and abused its discretion in assessing the Claimant with a five-day suspension. We will not, therefore, substitute our judgment for that of the Carrier.

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 4th day of June 1986.