

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 11005
Docket No. 11012
2-MP-MA-'86

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. Claim in behalf of Machinists R. D. Davis and J. D. Beene for three tenths of one hour each at the pro rata rate of pay due to Foreman G. E. Harken violating the controlling Agreement on August 24, 1983. The applicable rules, in particular, are 1, 21, and 32. Violation occurred when the Machinists were instructed to fill out their time cards for the day and show their time out at 2:40 PM. It is also requested that Mr. G. E. Harken be advised to refrain from assessing discipline in the future; that all references to this matter be stricken from the personal records of Machinists Davis and Beene.

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.

The Carrier maintains a repair facility at North Little Rock, Arkansas employing various shop craft Employees which include Machinists. The Claimants were assigned to the first shift from 7:00 A.M. to 3:00 P.M.

On August 24, 1983 the Foreman allegedly instructed the Employees under his supervision to pick up their tools and clean up the work area. Apparently these instructions were given at about 2:30 P.M. Whether or not the two Claimants were actually given these instructions is certainly not clear from the record. However, about ten minutes later the Foreman found them in the storehouse allegedly engaged in conversation. The Foreman then ordered them to fill out their time cards as of 2:40 P.M. thus effectively docking each of the Claimants twenty minutes pay for the day.

The Organization contends that Machinist Davis had been ordered by the Foreman to take some pipe fittings to the storeroom and that he met Machinist Beene who had already delivered some Gaskets and other materials there. This could all have been a part of the clean up operation which was apparently performed every day. We note that neither of these employees' contentions has ever been denied by the Carrier. The inference must be that he did. As to the alleged conversation, much depends on how long it lasted. If they were actually standing and conversing with each other that would be one matter; if it was merely some passing remarks when they met there, that would be quite another matter. It could in any case have consumed very little time as it would have taken them sometime to put up their tools and apparently only ten minutes had elapsed between the time the Foreman had issued those clean up orders and the time he ordered them to check out.

The Carrier also makes several comparisons with other situations whereby an Employee would not receive a full day's pay such as coming to work late, going home sick, or being in the parking lot. None of this happened. In this case, they were away from their normal work area, but if they actually delivered some spare material to the storeroom, and it has never been shown that they did not, they may well have been starting back to the work area when accosted by the Foreman.

Rule 32 reads in part:

"An employee covered by this agreement who has been in service more than 30 days, or whose application has been formally approved, shall not be disciplined or dismissed without being given a fair and impartial investigation by an officer of the railroad." (Emphasis added)

The Organizations contends that Carrier's action in ordering Claimant's to check out 20 minutes early was in violation of this Rule as it imposed a penalty on them while denying them their contractual right to a fair and impartial investigation.

The Carrier contends that no discipline was imposed and that the Foreman arranged for their time cards to show they had stopped working at 2 P.M.

In the instant case we shall follow the findings in Second Division Award No. 7588 in which this Board held in part:

"Upon careful considerations of the record we are persuaded beyond doubt that the letter in question and its permanent placement in Claimant's personal record amounted to an imposition of discipline without affording the employee the contractual rights he is guaranteed by Rule 34. In so holding we wish

to make it clear that we endorse strongly the principles of progressive discipline to which most informed managements adhere, whether specifically required by contract or not, i.e., a system of escalating penalties varying from oral reprimands and with warnings through suspension of various durations culminating in the ultimate industrial penalty of dismissal Also we understand and appreciate the differences between discipline of an employee for admitted or proven wrongdoing and counselling an employee so that he/she may avoid wrongdoing and consequent discipline.

Not only the letter is self disciplinary in nature, but its placement in Claimant file practically assures that he would be treated as a second offender under a progressive discipline should Carrier, in the future, bring him up on charges, find him guilty and decide to impose discipline under Rule 34. Since we find the letter and its placement in Claimant's file to be discipline and there is no question that Rule 34 was not complied with before the imposition of that discipline, we shall sustain the Claim."

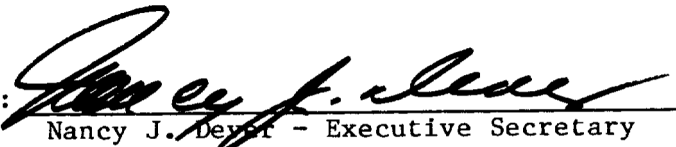
In the instant case the Foreman ordered the Claimants to check out 20 minutes early thus imposing a penalty on them of 20 minutes pay. We have no way of knowing whether or not this went into their personal record or not but as a penalty it was discipline. We will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 1st day of October 1986.