

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

(International Association of Machinists and Aerospace
Workers

Parties to Dispute: (

(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employes:

1. That the Indiana Harbor Belt Railroad Company be ordered to clear and otherwise expunge the record of Machinist C. Cantrell of a 60-day deferred suspension in violation of Rule 36, but not limited thereto, of the prevailing agreement dated January 1, 1947, as subsequently amended.

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.

A review of the record shows that Claimant was assessed a sixty (60) day record (deferred) suspension following an investigation in which Claimant was found to have been insubordinate, in that he disobeyed direct orders from his Supervisor at approximately 2:15 P.M., on November 30, 1983, and thereafter displayed a belligerent and hostile attitude towards his (Claimant's) Supervisor.

The only witnesses who testified at the investigation were the Claimant and the Claimant's Supervisor. Although other individuals were identified by the Claimant and the Supervisor during their respective testimony as possible witnesses, neither the Claimant nor the Carrier solicited from these individuals to corroborate their respective versions of the incident.

The issue in the dispute is twofold; first, whether the length of time taken by the Claimant to satisfy a directive of his Supervisor constituted insubordination, and (2) whether the verbal exchange between the Claimant and the Supervisor amounted to a "belligerent and hostile attitude towards (the) Supervisor."

Although the testimony of the Claimant and the Carrier's Supervisor agree in many respects, their respective testimony differs with regard to the specific time when the Supervisor directed Claimant to "hook-up a triple unit . . .," whether the degree of immediacy attached to need for the power units was expressed to the Claimant by the Supervisor, and whether the Claimant actually refused to do the task assigned by the Supervisor.

This Board has held that insubordination may occur without an express refusal to perform directed work. See Second Division Awards 7193 and 7128. This Board is of the opinion that where there is an intentional delay on the part of an employee to perform the tasks assigned by the Supervisor a charge of insubordination may lie.

The Hearing Officer heard testimony from the Claimant and the Supervisor which was predictably contradictory on the important issues. It has been well established that the reconciliation of directly contradictory testimony and the establishment of witness credibility is properly the function of the Hearing Officer and not this Board, absent a most unreasonable conclusion, abuse of discretion, or arbitrary or capricious behavior on the part of the Hearing Officer. The record does not reflect the existence of any of these traditional exceptions. See Second Division Award 9282.

The introduction of the Claimant's personnel record in this instance did not appear to prejudice Claimant's rights. See Second Division Award 7613.

Accordingly, for the reasons cited herein, the Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.