

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation (AMTRAK) violated Rule 24 of the scheduled Agreement dated September 1, 1977, but not limited there-to, when it arbitrarily and capriciously assessed Machinist C. Riley thirty (30) days suspension following investigation held on April 25, 1986, for allegedly activating a twenty (20) days deferred suspension of harassment to fellow employees and failure to follow instructions.

2. That accordingly, a decision should be reversed, Machinist C. Riley be made whole for all losses and his record cleared of any reference to the charge.

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.

On March 24, 1986, the Claimant was assigned to work in the traction motor area of the shop. Two Machinists were working opposite the Claimant, approximately fifty (50) feet away. The Claimant was allegedly observed hollering and making derogatory remarks to one of the Machinists. The Supervisor requested that the Claimant stop his banter. The Claimant allegedly continued his remarks. A letter charging the Claimant with violation of NRPC Rules of Conduct F.2 and L was issued on April 1, 1986, and an Investigation was held on April 25, 1986. On May 9, 1986, the Claimant was assessed a thirty (30) day actual suspension activating a previously deferred twenty (20) day suspension for the period of June 6 through July 25, 1986.

It is the position of the Organization that the Claimant did not make derogatory remarks to Machinist Krizmanich; that the Claimant was, in fact, making remarks about the Machinist to Machinist Durkovic. This position is verified by Machinist Durkovic who also testified that the Claimant was using street talk that was an everyday occurrence in the shop. Further, the Organization's claim that this type of street talk is common in the shop was confirmed by one of the Carrier's Supervisory witnesses who said that the terms used by the Claimant are used "more often than not; it is used quite frequently." The Organization also denies Krizmanich's accusation that the Claimant was following him using derogatory remarks and claims that there was no proof offered to substantiate this accusation. Also, the Organization points to the fact that on the day previous to this incident, Krizmanich accused the Claimant of throwing a bottle at him. The Carrier, according to the Organization, found no proof of this bottle throwing incident. The Organization refutes the Supervisor's Claim that the Claimant engaged in this verbal harrassment during his entire shift by pointing to the Supervisor's testimony that the Claimant finished his assignment on that day.

The Carrier states that the Claimant was observed by the Supervisor to be making derogatory remarks to Durkovic about Krizmanich in a loud voice; that the Supervisor properly directed the Claimant to leave Krizmanich alone, however, Claimant continued the harrassment. Thereafter, the Supervisor asked the Organization's local committee representative to speak to Claimant and convince him to cease. However, the Claimant still continued his harrassment. It is the Carrier's position that the Supervisor told the Claimant to cease his harrassment on at least six (6) occasions and told him that if he did not, he would write him up and pull him out of service. The Carrier further claims that the Claimant's activity toward Krizmanich scared him. By his actions, the Carrier claims that the Claimant was in violation of the applicable Rules and was insubordinate.

In reviewing the Organization's position, it is noted that the Organization claims a violation of Agreement due process in that the Hearing Officer did not grant the Organization a recess to examine certain documents. The Board rejects this Claim in that the Organization did not establish that these documents were relevant and material to either the Carrier's position or detrimental to the Agreement due process rights of the Claimant.

A close scrutiny of the record also reveals that while the Supervisor may have spoken to the Claimant on several occasions about his remarks about Krizmanich, it was not clearly established that each time he spoke to the Claimant he was doing so in clear and precise supervisory terms. The Supervisor attributes to himself such remarks as "leave him alone" and that this "will not be tolerated." Finally, this Supervisor testified that he did give the Claimant a direct order to cease or he would be written up and pulled out of service. The record shows that the Claimant was not pulled out of service. Also of concern to the Board is the abundance of testimony from both Carrier and Organization witnesses that established the use of "shop talk" as commonplace more so than not. It is well established that in order for a rule to be effective, it must be enforced uniformly and consistently. That is obviously not the case at this facility. Before a rule can be enforced individually, it must first be enforced property wide.

Thus, as the Supervisor did not pull the Claimant out of service, and as the Claimant did finish his assignment on the day in question, and as the Supervisor's alleged instructions to the Claimant were not precise from the start and as the Rules the Claimant is alleged to have violated have not been enforced uniformly, the Board sustains the Claim.

The Claimant shall be made whole for all lost wages and benefits derived from the Agreement as a result of the suspension(s) assessed herein.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1989.