

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

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(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 thereto, when it arbitrarily and capriciously assessed Machinist C. Riley forty-five (45) days suspension following investigation held on April 25, 1986, for alleged failure to complete assignment.

2. That accordingly, a decision should be reversed, Machinist 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 April 1, 1986, the Claimant was issued a charge letter alleging violation of NRPC Rules of Conduct L & O. An Investigation was held on April 25 and on May 14, 1986, the Claimant was notified by letter that he was assessed a forty-five (45) day suspension commencing August 25 through October 8, 1986. The Claimant was accused of not performing the assignment given to him by his Supervisor. He was also charged with being absent from his assignment. Specifically, the Claimant was assigned, with another employee, to replace one inertial filter and two side covers on Unit 307. This assignment was given at 7:30 A.M. At 9:00 A.M., the Claimant and the other employee were told to perform the same work on Unit 370. At 10:00 A.M. the Claimant was pulled off of Unit 370 to put oil into another unit. At 11:30 A.M., the Claimant was placed back on Unit 307. Carrier alleges that not only was the work not done on Unit 370, but that Claimant was absent from work for one and one-half hours on the afternoon in question.

The Organization claims that there is no way that the Claimant and the other Machinist could have finished the work assigned to them on that shift. First of all, the Organization points to the record wherein the Supervisor admitted that he had the Claimant in his office from 9:00 A.M. until 10:30 A.M. to discuss an incident involving another employee. The Organization also directs the Board to evidence that establishes that the replacement of an inertial filter is a four (4) hour job. The Organization argues that the Turn Over Book shows that the inertial filters for Unit 370 would not be ready for installation until eight (8) hours after the end of the Claimant's shift. Further, an Organization witness testified that he heard a page for the Claimant in the morning prior to the 9:00 A.M. session referred to above, but that contrary to the Supervisor's testimony, he did not hear three (3) additional pages for the Claimant on that afternoon.

Finally, the Organization concludes that it would have been impossible for the Claimant to fulfill the assignment, if in fact, the assignment as stated by the Supervisor was given him, during his shift. The Organization added the hours as follows to reach this conclusion: 4 hours for Unit 307, 1 1/2 hours meeting, 4 hours for unit 370, 1/2 hour for lunch, 1 1/2 hours to put oil into another unit. This accounts for eleven and one-half (11 1/2) hours. The Organization charges that the Supervisor's findings that the Claimant did not complete the work on unit 370 is arbitrary and the result of a poor personal relationship between him and the Claimant. Further, the Organization refers the Board to the lack of plausible chronology in the Supervisor's testimony. Finally, the Organization rejects the Supervisor's claim that he paged the Claimant three (3) times and relies on its witnesses' testimony as proof of the Supervisor's vindictiveness in this regard.

Carrier states that the Claimant informed the Supervisor that when he was assigned the additional task on Unit 370, the Claimant told the Supervisor that he was only going to do one unit, that being Unit 307. Carrier argues that not only did the Supervisor page the Claimant three (3) times between 1:30 P.M. and 2:40 P.M., but also looked for him in the locomotive, the washrooms and lunchrooms without success. When asked why the assigned work had not been done on Unit 370, Carrier claims that the Claimant reminded the Supervisor that he told him he was only going to do one unit and departed the Supervisor's office. Carrier also states that during his questioning at the Hearing of his Supervisor, Claimant admitted his insubordination and, as such, there is no proper basis for disturbing the action of the Carrier.

Before the Board can proceed to the allegations against the Claimant, it will first address the Carrier's contention that the Claimant admitted guilt. A review of the questions and answers that led to the Carrier's conclusions in this regard indicate that the Claimant asked the Supervisor that, in effect, 'if I said I was only going to do one unit, I was insubordinate, wasn't I?' The Supervisor responded in the affirmative. The Claimant then asked the Supervisor why he did not go to the Organization if he, the Claimant, was insubordinate. The Board finds that the Claimant merely engaged in supposition with the Supervisor and not admission of guilt.

The Board has examined the record carefully as it relates to the number of hours testified to by the Supervisor and other witnesses regarding the events of the day in question. There is no doubt but that the Unit 307 assignment took four (4) hours; there is no doubt but that the Claimant was in the Supervisor's office anywhere from 45 minutes to one and one-half hours; that the Claimant was assigned to put oil in another unit which lasted one and one-half hours; that he had a lunch break and that he may have started work on Unit 370. The Board uses the term "may" due to the Supervisor's testimony that he took the Claimant off of Unit 307 at 9:00 A.M. to work on Unit 370 but then states that he pulled the Claimant off of Unit 307 at 10:00 A.M. and that at 11:30 A.M. he put the Claimant back on Unit 307. Further, evidence was also adduced that the Claimant was in the Supervisor's office between 9:00 A.M. and 10:30 A.M.

In order to meet its burden of proof, evidence must be, at the very least, clear and convincing. In the instant case, the evidence was not clear; the times conflicted and were in excess of the Claimant's shift. There is evidence of impossibility of performance on the part of the Claimant. The Board also finds that the weight of the evidence does not substantiate the charge that the Claimant was away from his assignment. Considering the work that was performed by the Claimant and the time allowed for that work in conjunction with meetings and lunch, it appears, from the record, that the Claimant's day was full. The Carrier offered no corroborating evidence regarding the Claimant being paged on three (3) occasions. Such corroboration could easily have been supplied.

Based on the foregoing, the Board sustains the Claim. The Claimant will be made whole for all lost wages and benefits incurred during the forty-five (45) day suspension.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

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