

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12739
Docket No. 12589
94-2-92-2-134

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

- "(1) That CSX Transportation, Inc. violated Rules 30 and 32, but not limited thereto, of the controlling agreement when it removed Machinist J. A. McSween from service, prior to investigation held on June 4, 1991.
- (2) That, accordingly, CSXT be ordered to reimburse Mr. McSween for all pay and benefits lost (made whole) as a result of said suspension and remove all reference to the charges from his record."

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 employee 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.

Claimant is employed by Carrier as a Machinist. On May 9, 1991, he was involved in a Division Value and Quality Seminar with twenty other employees. The seminar was held off the property and was designed to inform the employee of the Company's objectives in the future. As a preliminary exercise, the participants were asked to pair up and interview their partners.

Based on the interview, they were to introduce each other to the class. Claimant and his partner were acquainted with each other and apparently did not get along. When it came time for Claimant to introduce his partner, he stood up in front of the class and stated, "This is J.D. Roop, the sorriest son of a bitch I know." As a result of this incident, Claimant was charged with conduct unbecoming an employee of CSX Transportation. A hearing in the matter was held and Claimant was found guilty and assessed a twenty-six-day Suspension, which equaled time held out of service.

This Board has reviewed the record of this case and has concluded that a twenty-six-day Suspension for the rule infraction committed is arbitrary and capricious and need not have been assessed. This Board concludes that Claimant's behavior was unacceptable, but a seven-day Suspension would have been more than enough for Carrier to make its point. The twenty-six-day Suspension is reduced to a seven-day Suspension. Claimant shall be paid at the appropriate straight-time rate for all time lost beyond seven days.

AWARD

Claim Sustained in accordance with the Findings.

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.