

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13513

Docket No. 13420

00-2-99-2-13

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(International Association of Machinists and Aerospace
Workers**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “(1) Consolidated Rail Corporation arbitrarily and capriciously assessed Machinist K. P. Swartz thirty (30) days suspension per Rule 6-A-4 (b) (1), following trial held on January 23, 1998. (Thirty days deferred suspension)**
- (2) Accordingly, Machinist K. P. Swartz, should have his record cleared of any reference to the charges, as if the unjust discipline had not been imposed, and removal of the thirty (30) days deferred suspension.”**

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 were given due notice of hearing thereon.

After reviewing the transcript of the Investigation and the on-property handling, it is clear that no conflict of facts exist. The Claimant was, as were all other second shift employees at the Juniata Locomotive Shops, awarded a safety incentive clock as a reward for being accident-free for a period of one year. The Claimant was not enamored with the gift, and during his paid lunch break he smashed the clock with a small hammer. Word of the Claimant's actions spread around the Shop, and the General Foreman, while walking through the Shop at 11:00 P.M., found the smashed clock lying on a work bench.

The Claimant was called to meet with the General Foreman and one other official who queried the Claimant concerning what occurred and when. The Claimant responded, admitting the destruction of the clock. The Carrier then scheduled an Investigation. Following the Investigation, discipline was assessed, as is evident by the dispute.

This meeting, which then resulted in the charges being held, has become an issue as Rule 6-A-2 reads:

"An employee who is required to make a statement prior to the trial in connection with any matter which may eventuate in the application of discipline to any employee, if he desires to be represented, may be represented by a union representative. A copy of the employee's statement, if reduced to writing and signed by him, shall be furnished him by the Company, and a copy shall be given to the union representative."

The Organization is of the opinion that it is the Carrier's responsibility to advise the Claimant of his right for representation during any meeting that could lead to disciplinary action.

The Board finds that the language of the Rule places the choice for representation clearly on the Claimant's shoulders.

When the Claimant was summoned to the office to meet with his Supervisors, he could not have refused to come, but he could have declined to offer any specifics about the matter being discussed particularly when he believes charges could be assessed later, and in lieu, request the presence of a representative.

Testimony developed that the Claimant did not request representation and he did answer candidly all questions as he has done in the Investigation.

It is obvious that once the Carrier gave the Claimant the clock, it was the Claimant's to do with it what he will. But, the Claimant could not wait until he got off duty. While on a company paid lunch break, he did react in an in-your-face manner, smashing the clock with a hammer. This is a clear violation of Rule 4012(d) when he engaged in an activity that was not directly related to his duties.

The Claimant had been, at the time of the incident, with the Carrier for five years. He has no disciplinary history.

Pursuant to the Disciplinary Rule, the 30-day deferred suspension causes no lost time providing the Claimant is not cited for and found culpable of violating some other Rule within six months following the discipline assessment in this dispute. In that case, he would have to serve the 30 days plus whatever other discipline he may be assessed.

Under the circumstances, the discipline is reduced to an entry of facts, and that entry restricted solely to a violation of Rule 4012(d). If the Claimant has lost any time because of the incident, he is to be compensated therefore as provided in the Schedule.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 15th day of May, 2000.