



Award No. 6058

Docket No. 5800

2-EJ&E-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Elgin, Joliet and Eastern Railway Company violated the Agreement when they deliberately, arbitrarily and unjustly assessed Carman A. Hernandez three (3) days' suspension on November 15, 1967, as a result of a hearing held on October 10, 1967. The Claimant was erroneously accused and charged with insubordination.

2. That accordingly, the Elgin, Joliet and Eastern Railway Company be required to compensate Carman A. Hernandez eight (8) hours' pay for each day, November 28, 29 and 30, 1967, that he was denied his right to work, under the current working Agreement, plus his record cleared of all charges.

EMPLOYEES' STATEMENT OF FACTS: The Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the carrier, maintains a large car shop in Joliet, Illinois, whereat Carman A. Hernandez, hereinafter referred to as the claimant, is regularly employed. Claimant entered carrier's service in November of 1961 as a temporary carman and was promoted to carman February 16, 1966, and has continued to be regularly employed as such to date.

Under date of September 18, 1967, carrier's assistant general foreman — car shop, H. D. Brant, addressed a letter to claimant requesting him to attend formal investigation in the office of general foreman — car shop, Joliet, Illinois, on Tuesday, October 10, 1967, at 10:30 A. M., for the purpose of developing facts and determining his responsibility, if any, in connection with the charge of insubordination preferred against him by Mr. Ray Lopez, car foreman, when he failed to follow an instruction, pushing Mr. Lopez, and failure to report to the office when instructed to do so by Mr. Lopez on September 14, 1967.

Hearing was held October 10, 1967, as scheduled.

3. The carrier fully considered claimant's personnel and work record when it only suspended the claimant for three days.

The carrier respectfully requests a denial award.

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.

A hearing held some 22 days after placement of charges against claimant is reasonably prompt where, as here, claimant is not suspended pending the hearing, there is no request on the part of claimant or his representative to advance the hearing date, and the issue is not raised at the investigation.

By his own admission, claimant concedes that he did not obey his foreman's instructions to go back up on the platform and drive rivets. Even if the lunch hour had already started when he was given this order (yet no one claims to have actually heard the 11:55 A. M. whistle blow) claimant could have complied, and filed claim for redress. In fact, the foreman asserts that he told claimant that if it developed that he had overlapped his lunch period, he would be paid the overtime involved.

Be that as it may, there is no excuse whatever for claimant to have shoved his foreman while discussing whether or not the lunch period had already started. Although the testimony on this aspect of the case is conflicting, the circumstance that there is credible evidence to support the charge, frees the discipline assessed from all semblance of arbitrary or discriminatory taint.

Accordingly, it must be concluded that claimant is guilty as charged, and the three days' suspension should not be overturned. See Awards 1658, 1687, 1809, 2996, 3676 and 5211, National Railroad Adjustment Board, Second Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1970.

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