

**Award No. 6216**

**Docket No. 6019**

**2-C&O-MA-'71**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Machinists)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
(Chesapeake District)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Machinist Robert A. Bryant was unjustly suspended from service on March 5, 1969 for a period of eight (8) actual working days.
2. That accordingly the Carrier be ordered to compensate the claimant for eight (8) days for loss of wages as a result thereof.
3. That accordingly the Carrier be ordered to clear Robert A. Bryant's record of this charge.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist Robert A. Bryant, hereinafter referred to as the claimant, was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the carrier, for a period of twelve years and one month in the carrier's shops at Huntington, West Virginia on the second shift 3:30 P. M. to 11:50 P. M., Monday through Friday, rest days Saturday and Sunday.

The carrier, represented by Mr. D. W. Walker, Shop Superintendent, Huntington Shops, notified claimant under date of February 17, 1969 to attend an investigation to be held in Production Manager's office at Huntington Shop at 3:45 P. M. on February 19, 1969. However, this date was by mutual agreement changed to the following day (February 20, 1969, same hour — 3:45 P. M.) on the following charge:

1. Charged with responsibility in connection with insubordination by refusing to perform work assigned to you by Machinist Foreman, A. J. Hays on February 14, 1969 at 9:15 P. M.

By letter dated March 4, 1969, carrier's Production Manager, Mr. G. J. Fletcher assessed discipline of ten (10) days' actual suspension, said sus-

- (3) That the claimant's excuse of being sick came too late; was after the fact, and was for the purpose of covering up his original reason for not complying with the instructions given him by his supervisor.
- (4) That the investigation met all procedural requirements of the Agreement.
- (5) Those conducting the investigation were in position to observe the demeanor of the accused and witnesses and had the advantage of weighing the logic, directness and sincerity of their responses.
- (6) There was no showing of arbitrariness, capriciousness or bad faith on the part of the Carrier.
- (7) That the claim is without merit and should be denied in its entirety.

**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 employes involved in this dispute are respectively carrier and employe 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.

On February 17, 1969 the Claimant was notified that he was charged with insubordination for refusing to perform work assigned to him on February 14, 1969, and that he was to appear for an investigation on February 19, 1969. Such an investigation was held on February 20 and 21, 1969. On March 4, 1969, the Claimant was notified that he was suspended for ten (10) days.

Employes contend that the penalty "constitutes unjust and harsh treatment by Carrier"; that the Carrier failed to prove the charge of insubordination; that the Claimant came to work sick on February 14, 1969; that he told his foreman he was going home.

The record shows that the gang foreman asked the Claimant to un-wheel engine 6811, to put trucks on Pit 23 for delivery to the truck gang. The brakes on the trucks were locked. The Claimant was instructed to take the pins out. He refused to do so after being ordered, contending that this was work of the truck gang. There is little, if any, refutation that this is essentially work of machinists. Claimant's testimony does not categorically deny this.

Employes and the Claimant, rather, contend that the Claimant was ill and that he told the foreman that he was going home. Claimant testified that he told the foreman he was sick at 9:30 P. M. and that he was going home. It was after this that he told the foreman that he felt the work should be

assigned to the truck gang. The foreman testified that the incident occurred about 9:15 P.M. and that the Claimant did not complete his time card and did not hand it in until about 9:30 P.M. At no time did the Claimant tell the foreman when the work assignment was made that he was ill, and that he was going home. And the Manager of the Erecting Shop testified that he talked to the Claimant at about 9:30 P.M. He asked the Claimant if he had completed his work assignment, and that the Claimant replied, "I am going home under protest; I am sick, the job made me sick."

Claimant's credibility is questionable. Upon all of the evidence and the whole record, it has been firmly established that the Claimant was guilty of insubordination, and that the penalty was reasonable and justified.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.

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