



Award No. 6224
Docket No. 6030
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.

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 William L. Jackson was unjustly given an entry against his service record.
2. That accordingly the Carrier be ordered to clear the service record of William L. Jackson in connection with this charge.

EMPLOYEES' STATEMENT OF FACTS: Machinist William L. Jackson, hereinafter referred to as the claimant, was employed by the Chesapeake and Ohio Railroad, hereinafter referred to as the carrier, for a period of six (6) years in the carrier's shops at Huntington, West Virginia, on the first shift 7:00 A.M. to 3:30 P.M., Monday through Friday, rest days Saturday and Sunday.

The carrier, represented by Mr. D. W. Walker, Superintendent, Huntington Shops, notified claimant under date of March 10, 1969 to attend an investigation to be held in Production Manager's office at Huntington Shop at 9:00 A.M., March 26, 1969; however, this date was by mutual agreement changed to March 24, 1969, at 9:00 A.M. on the following charge:

"You are charged with failure to properly perform your duties as a machinist on March 5, 6 and 7, 1969, while assigned to final assembly of EMD power assembly components in the Power Assembly Gang by reason of the fact that on these days your output was as follows:

Wednesday, March 5, 1969 - cleaned 4 EMD liners. Applied ring sets to 6 EMD pistons. Moved 16 EMD liners from pallet to work table.

Thursday, March 6, 1969 - inspected and reworked 16 EMD piston carriers. Renewed inserts, applied wrist pins, oiled and gauged 16 pins.

The employees engaged in a deliberate work slow down with Jackson participating therein. The evidence brought forth in the investigation indicates that on the first day involved in the charges, Jackson performed one and one-half hours' service, on the second day performed five and one-half hours' service, and on the third day performed four and one-half hours' service. In the instant case, the employees made a mockery of the whole proceedings, requiring two full days of handling, parading forth seven witnesses with long dissertations on the part of the three employee representatives present with much irrelevant matter brought into the investigation. Of the seven witnesses brought in by the employees, two have cases pending before your Board; E. R. Davis, Case No. 70-156, and L. J. Smith, Case No. 70-149.

Throughout the investigation the employees allege that investigations cannot be held unless the carrier can show a rule number which the employee has violated, the carrier has no right to establish work standards or determine what is a reasonable day's work, the quality of the supervision is challenged, supervision is accused of instructing employees to deliberately slow down, which statements the accused supervisor specifically denied on page 16. The employees further indicate that they should be the judge of what should be produced and considered as a day's work. The employees also allege that the supervision should require the man to do a reasonable day's work; yet, at the same time, lend every support to the employees who do "soldier" on the job.

The statement of Foreman Hinerman is quite significant, and after reviewing Hinerman's answers to questions asked, one can easily understand the employees' attack on Hinerman and endeavor to discredit him by their allegations and inferences. Review of the statements of Hinerman and Sullivan will clearly indicate why Jackson performed no more actual work than he did on the dates under investigation. The information developed also indicates that Jackson's output on these dates were below his output on other dates, which may or may not have been satisfactory.

It is the position of the Carrier that the evidence fully supports the minimal discipline rendered in the instant case. A reading of the lengthy investigation reveals the issues in this case and the same harangue as involved in the Jackson case took place in the cases of Larry Jack Smith, H. R. Davis, Jr., T. P. Pettigrew, and Ernie Ray Davis, and Carrier wishes to make those cases an overall part of the instant case by reference.

Carrier feels that it has the right, duty and obligation to its employees, the public in general, and to its stock holders to properly manage its affairs. To sustain the claim of the employees in the instant case would destroy much of the ground that has been gained in the employee-employer relationship since this and other investigations were held at Huntington Shops in early 1969.

It has been held many times by this Board that the Board will not substitute its judgment for that of the carrier unless it can be shown that the carrier's discipline as rendered was arbitrary, capricious, or unjust. This cannot be shown in the instant case. To the contrary, the discipline rendered in view of all circumstances was extremely lenient; therefore, the carrier urges that the claim of the employees 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.

The facts, the investigation and the penalty in this case are identical with that adjudicated in Award No. 6220.

The findings in Award No. 6220 are applicable here, and are affirmed. For the reasons stated in said Award No. 6220, it is the finding of the Board that the claim has no merit.

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.