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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6362
SECOND DIVISION Docket No. 6155
2-MP-MA-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employes' Department, A. F. of L. - C. I. O. (Machinists)
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company unjustly suspended Machinist T. R. Winfrey from service for thirty (30) actual days on Wednesday, February 18, 1970 til 12:01 A.M., Saturday, March 21, 1970, for his responsibility in connection with failure to properly apply No. 14 connecting rod basket on Diesel Engine Unit No. 237 on January 21, 1970.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist T. R. Winfrey in the amount of eight (8) hours at the straight time rate from Wednesday, February 18, 1970 to 12:01 A.M., Saturday, March 21, 1970; also that his personal records be cleared by letter of this discipline.

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 waived right of appearance at hearing thereon.

Claimant with the aid of a machinist's helper performed the assigned work. Two other machinists, in turn, finalized and inspected the work. The engine was returned to the shop when it failed to operate properly. Inspection determined that the failure occurred in the part of the engine which had been repaired.

The hearing was first scheduled on 3 days notice but was held 10 days after notice when the Local Chairman requested additional time. The two machinists were given 15 days deferred suspension, the claimant was given 30 days actual

suspension and the helper (who was taken off the work before its completion) was not penalized. The Organization contends that the notice did not state the charge precisely, that not enough time was given to prepare adequately for the hearing, that a material witness who was on vacation was not given an opportunity to testify and that the carrier did not prove that claimant was at fault.

Rule 32 of the Agreement follows the usual Rule for reasonable notice to the employe of the precise charge and the opportunity to produce witnesses and to be represented. It is usually required that the hearing be held promptly. Three days notice may have been too short but this was corrected when the time was extended at the request of the Local Chairman. The charge was definite and clearly referred to the work performed which is in question. When it was read to claimant at the hearing no further objection was raised and the claimant stated that he was ready to proceed, Tr. p.15. The claimant answered that he had a full opportunity to produce evidence, Tr. p.22, although he then stated that the investigation was not conducted fairly and impartially, Tr. p.22, 23. This uncertainty does not help the claimant.

The questions asked by the claimant's representative and the testimony offered by both parties showed that they were familiar with the subject matter. The work performed and the damage which occurred later were discussed by the witnesses for both sides in great detail. Additional witnesses for either side could hardly have added more information or knowledge than was presented. It is basic to the presentation of proof that it is not the quantity but the quality of the evidence which must be considered. If the machinist on vacation had unusual or otherwise unobtainable evidence to offer, that should have been made known before the hearing started. First Division Award 19699 states the conclusion to be followed by reasonable people, in substance, that the claimant could not reasonably doubt what he was charged with having done wrong.

There is considerable controversy over the question of fault. Organization representatives have argued the question at great length and vehemently, demonstrating complete familiarity with the work in question, including discussion at this level. Nevertheless, fundamental policy is so well established that it cannot be ignored. When called upon to review decisions of administrative agencies, the Courts have consistently refused to upset the decisions if substantial evidence has been produced to support the result. Substantial evidence does not require that it be by a preponderance of the evidence or beyond a reasonable doubt. This Board has held this to be so in many cases, see Second Division Awards No. 6196, 3676, 4401, 4407, 5020; and Third Division Award No. 15574.

We do not believe that it would violate the policy stated herein if we disagreed with the penalty imposed upon claimant as related to the discipline handed out to the two other machinists. If they were also parties to the wrongdoing, as decided by the Carrier, and if discipline is to be measured by degree, then the 30-day actual suspension is excessive. Claimant's penalty should be reduced to 30 days deferred suspension. He should be paid for lost time at the pro rata rate.

A W A R D

Claim disposed of in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1972.