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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6450  
Docket No. 6276  
2-ERCoFC-MA-'73

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

Parties to Dispute: ( System Federation No. 20, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Machinists)  
( The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That under the terms of the controlling agreement Machinist Ronald Wanda was unjustly suspended from the service of the Carrier for a period of three days, October 10 through October 13, 1970.
2. That, accordingly, the Carrier be ordered to compensate Machinist Wanda in the amount of three (3) days' pay at machinists' straight time rate of pay for the period of unjust suspension, October 10 through October 13, 1970.

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, a machinist inspector, suffered a three day suspension for allegedly failing to adhere to instructions as set forth in Carrier's Maintenance Department Operating Manual which state in part:

"To avoid possible personal injury in the event of malfunctioning of diesel engine in locomotive, be governed by the following instructions:

1. (a) If engine develops heavy bearing pound ...  
SHUT DOWN ENGINE IMMEDIATELY ... DO NOT OPEN  
OR LOOSEN CRANKCASE COVERS FOR AT LEAST TWO  
HOURS AFTER SHUTDOWN."

Rule 20 of the controlling agreement provides that an employee shall not be "unjustly suspended ... from service", and shall be afforded "a fair hearing by designated officer of the carrier".

It is the established position of all Divisions of the National Railroad Adjustment Board that the imposition of discipline is within the discretion of the carrier and that we will not substitute our views, sympathies, and predilections for that of the duly designated carrier officer who conducted the inquiry; provided, however, that the record before us discloses that the investigation was conducted in a fair and impartial manner and that the employee was afforded due process. Further, we reserve the right to reverse the disciplinary action taken against an employee upon a finding that same was arbitrary, capricious, unreasonable, or excessive. (See Awards 5703 and 3894)

Claimant was penalized for allegedly failing to comply with the Manual instructions. To do so would have necessitated taking the locomotive out of service for at least two hours, causing replacement of the equipment to perform work for which that engine was scheduled, which would have meant delays in operations. Before undertaking to do this, he alerted his foreman of his dissatisfaction with the noises he heard when servicing the engine and recommended that it be brought into the shop for a thorough inspection and repair. The foreman rejected this suggestion and ordered him to have the locomotive continue to run and be operated. Had he disregarded supervision's instructions, he might have subjected himself to a charge of insubordination. Several hours later, Claimant rendered a written report of his findings, which he turned in to the foreman in charge at that time, and took the trouble to alert that foreman concerning the engine. This supervisor made note of the report and said he would have a follow-up inspection made twenty hours later. Claimant had a right to assume, as we do, that the Carrier appoints as its foremen, qualified, knowledgeable, and experienced people, upon whom it relies to direct its work forces. It does not appear that claimant's prompt precautionary endeavor to receive approval from supervision before taking the equipment out of service, rather than, on his own, following the letter of the above quoted bulletin, constitutes a punishable infraction.

The record fails to indicate negligence or willful disregard of instructions. Nor does it reveal any prior incident during his seven and one-half year's service of such tendency. It must therefore be found that the assessed discipline falls within the category of reversible exercise of discretion.

A W A R D

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E. A. Killian  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1973.