

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

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{
{ The Long Island Rail Road Company

Dispute: Claim of Employes:

1. That Machinist A. Caputo was unjustly dealt with under the controlling agreement and thereby damaged when he was deprived of his employment on December 31, 1971, as a result of being removed from service on the alleged charge of "insubordination".
2. That, accordingly, the Carrier be ordered to additionally compensate Machinist A. Caputo, hereinafter referred to as the Claimant, in the amount of thirty (30) days from December 31, 1971 through February 10, 1972, at the daily rate of \$42.40 per day, plus three holidays, (New Year's Day, Lincoln's Birthday, and Washington's Birthday), which the claimant normally would have worked, at the daily rate of \$63.60, a total claim of \$1,462.80, and that the Claimant be made whole for any benefit losses suffered as a result of the Carrier's action against him.

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.

Claimant was assigned as a Machinist at Carrier's Richmond Hill facilities. On December 31, 1971 Claimant was removed from service at about 9 A.M. for insubordination, in that he allegedly refused to perform an assignment directed by his supervisor. Following an investigation, properly conducted, Claimant was discharged from the Carrier's service. Subsequently, after the appeal was progressed the discipline was reduced to a forty-four day suspension. Finally, the highest officer of Carrier reduced the penalty to a thirty day suspension and it is that penalty which is the monetary part of the claim before us.

Carrier asserts that the Claim presented to the Board is an enlargement of the claim handled on the property and requests that the matter be dismissed. With due recognition of the authorities cited by Carrier in support of this contention, the facts presented do not support the position that there are material differences in the claims handled at the two stages of processing, and we shall deny the request.

The transcript of the investigation reveals the background of the dispute in some detail. There was a regular assignment at Richmond Hill involving the "push-pull" units of Carrier which was considered undesirable by the Machinists. During the summer of 1971 a meeting of the machinists together with the supervisors was held and an informal understanding was reached with respect to the "push-pull" assignments, which specified that the men would be rotated, insofar as practical, on that assignment. This practice, according to the transcript, was generally followed by the supervisors. Uncontroverted testimony indicates, however, that when Machinists were assigned to the "push-pull" out of rotation turn, they would object to the assignment and generally the situation was corrected. On at least one instance in December, prior to the dispute herein, an objection to the rotation resulted in no employee going to the assignment on that day. The union steward kept track of the assignments and was used as a resource in resolving disputes over the rotation. It appears that Claimant had in the past objected to the rotation and had the matter corrected.

On the morning in question Claimant was assigned to the "push-pull" job and felt it was improper since he had that assignment on the previous Saturday and Sunday. There were exchanges between Claimant and three different supervisors that morning with respect to the assignment, none of which appear to be accompanied by rancor or other affect. We must determine whether the evidence supported the Carrier's contention that he refused the assignment or whether he objected to the assignment, and whether or not his actions constituted insubordination.

Claimant was approached by Supervisor Falck on the morning of December 31st and was told he was assigned to the "push-pull". It seems clear and uncontroverted that Claimant told Falck that he had enough of the "push-pull" and wouldn't go since it was not his turn. He said further that it was another employee's turn, Olashaski. Falck testified that he returned to the office and reported to his fellow supervisor Sergeant, who said he was going to take Claimant out of service. Claimant next talked to Supervisor Berger who was to be the immediate supervisor on the assignment and told him that it was not his turn but was Olashaski's. Berger left without further comment and shortly thereafter Olashaski as well as Claimant were assigned to the "push-pull" job (it seems it was not usual to assign two men to the job in this fashion). Shortly thereafter Claimant talked to Sergeant who asked him whether he was going on the "push-pull". When Claimant responded that "no, it wasn't my turn" Sergeant told him he was removed from service as of that moment pending trial. The union steward then went to talk to Sergeant and Falck in an attempt to resolve the dispute but was told it was too late, that Claimant had been removed from service. These facts are substantially agreed to by both Carrier and the Organization.

In view of the history of this assignment and past practice, the actions of the supervisor were at best preemptory. The employee was given no consideration whatever: he was given no reason for the out-of-turn assignment nor was he warned to take the assignment or check out. Carrier's supervisors acted arbitrarily with respect to Claimant, quite differently from previous reactions to the same problem with Claimant and other employees. Arbitrary imposition of extreme discipline is not in accord with the intent of the agreement or the collective bargaining relationship. On the other hand it is essential for Carrier to operate an efficient Railroad with obedience to orders of supervisors as an essential ingredient. Under all the circumstances of this case we do not agree with Carrier that the investigation reveals flagrant insubordination; however, we cannot condone Claimant's behavior which went beyond merely objecting to the assignment. We conclude, therefore, that the discipline imposed was arbitrary and inappropriate with respect to the actions of Claimant. We shall reduce the penalty to a record reprimand. Claimant shall be made whole for all time lost, excluding penalty pay for holidays for which there is no support.

A W A R D

That the discipline be reduced to a reprimand. Claimant shall be made whole in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of January, 1974.