

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
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it improperly assessed Machinist R. L. Cundiff a ten-day suspension from November 8, 1971, through November 17, 1971, as a result of an investigation held on October 19, 1971.
2. That accordingly, the Norfolk and Western Railway Company be ordered to make Machinist Cundiff whole for all lost time and other benefits resulting from the ten-day suspension.
3. That accordingly, the Norfolk and Western Railway Company be ordered to remove all indication of the investigation from Machinist Cundiff's service record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 entered Carrier's service on 2-12-64 and had a clean record at the time of the incident involved in this dispute. On October 15, 1971 Claimant was served with a notice of investigation charging:

"You are charged with insubordination in connection with incident that occurred on the morning of October 14, 1971, at Wheel Shop, Decatur, at which time you failed to follow supervisor's instructions and left company premises without permission."

Following the investigation, which was properly conducted, Claimant was found guilty of the charge and assessed a ten day suspension.

During the handling of the dispute on the property, Petitioner claimed that Carrier was discriminating against Claimant, who was a committeeman, in violation of Rule 35. The record contains no evidence in support of this contention.

On the morning of the incident in question, Claimant's foreman approached him for the second time that morning and found him sitting down at his assignment with a fellow machinist. In the course of an exchange with Claimant, the foreman told him, using abusive language, to either get up and go to work or go home. Claimant, apparently losing his temper, used abusive language to the foreman, told him he was going home and did so. These are the only relevant facts in this dispute and are not substantially in dispute. There is no doubt or dispute that both men used abusive language.

It is clear from the record that Claimant had been provoked by Foreman's words and lost his temper; he clearly over-reacted to this provocation, using ill chosen language and also taking the foreman up on his implicit injunction to either work or go home, by punching out. While this action cannot be condoned, neither can the intemperate language used by the foreman. This Board has long recognized the prevalence of "shop talk" in the industry, but also must take into consideration the fundamental responsibility of supervision not to be abusive to subordinates at any time, and particularly when giving any instructions. Based on the above, we conclude that the discipline imposed in this case was unnecessarily harsh and arbitrary. We shall reduce the penalty to a record suspension and make Claimant whole for all time lost.

A W A R D

Penalty reduced to a record suspension; claimant shall be made whole for all time lost.

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Award No. 6639
Docket No. 6486
2-N&W-MA-'74

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 21st day of February, 1974.