

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 7060  
Docket No. 6739  
2-LI-MA-'76

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers - Local Lodge 754  
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(  
( The Long Island Rail Road Company

Dispute: Claim of Employees:

That Machinist A. Johnson was unjustly dealt with under the controlling agreement and thereby damaged when he was deprived of his employment on December 4, 1973, as a result of being removed from the service of the Carrier on the alleged charge of "Insubordination".

That accordingly Machinist A. Johnson be compensated for all time lost resulting from being held out of service on the alleged charge of "Insubordination" and further, that he be made whole for any and all benefit losses suffered as a result of 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 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 were given due notice of hearing thereon.

This claim involves a 30 day suspension for failing and refusing to perform work after direct orders from the Foreman. Claimant asserts that the method indicated by his superior as to how to perform the work imperiled his safety. Claimant further asserts that he did not receive a direct order from his superior - merely a suggestion as to how Claimant should perform the work (with which Claimant disagreed.)

The Board is of the opinion that there was substantial evidence of probative value that warranted the conclusion by Carrier that Claimant was insubordinate, and we follow those prior awards that hold that where there is such a showing, such conclusion shall not be disturbed.

However, there is also evidence in the record that Claimant had a genuine fear for his safety if he were to perform the work as directed. As was stated in Second Division Award No. 6547:

"Fear of safety is a motivating factor strong enough to be given great weight in assessing a penalty."

Under the unique circumstances and facts presented herein, the Board finds that Claimants' discipline should be reduced from 30 days to ten days.

A W A R D

Claim disposed of per findings herein.

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 May, 1976.