

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated Rule 36 of the controlling Agreement when on October 9, 1975, removed Machinist F. Z. Reyes (hereinafter referred to as Claimant) from service pending investigation.
2. That Carrier failed to substantiate its charge against Claimant of alleged act of insubordination.
3. That, accordingly, Carrier be ordered to compensate Claimant for all wage loss from October 9, 1975 to October 24, 1975, inclusive.

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.

This is a discipline case. The claimant herein was assessed a 12 day suspension based upon a finding of insubordination. Said finding was made pursuant to a hearing held after proper notice.

The claimant alleges that there was insufficient evidence presented at the hearing to substantiate the charge and that this was not a proper case for suspension pending a hearing.

The facts in this case are somewhat in dispute. On the date in question, claimant was instructed to go to the west end of the yard to inspect the switch engines. There is some confusion in the record as to what was the nature of claimant's response, but in any event, he went home claiming illness. The record supports the carrier's contention that the claimant resisted the order. During the day the claimant had been moved

around to several assignments and evidenced some uncertainty as to what he was supposed to do and in what order. At the time he was given the Order to go to the West Yard he evidently told Foreman Garcia that he was sick and sick of Foreman Garcia.

The record is somewhat contradictory as to whether the claimant had permission to go home due to illness. On balance, it was not unreasonable for claimant to assume that inasmuch as he had been told to turn in his card if he was going home sick that he had cleared his leaving.

Frankly the record does not clearly reflect claimant's guilt or innocence. There is no question but that at the time in question there was some tension between the claimant and Foreman Garcia. Whether that tension gave rise to such insubordination so as to merit a 12 day suspension has not been proved in our estimation of the record.

It is clear to this Board, however, that this was not a proper case for suspension pending a hearing. The claimant had a good record. There has been nothing presented to this Board to substantiate Carrier's argument that leaving claimant in service pending hearing could endanger the employee or his fellow employees.

The record does not reflect that the Carrier has met its burden of proof or acted properly in suspending the Claimant pending hearing.

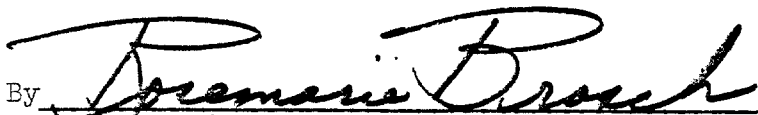
We will sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of February, 1978.