

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists
{ and Aerospace Workers
{
{ Grand Trunk Western Railroad Company

Dispute: Claim of Employee:

1. That the Grand Trunk discharged from service Machinist Anastacio Torres, for unfair, unjust and unreasonable reasons.
2. That Anastacio Torres be restored to service at the Pontiac Engine House with all lost wages paid in full and all rights unimpaired.

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.

After a fair and proper investigation, Claimant was dismissed from service on May 13, 1977, for insubordination to his supervisor; making threatening gestures with a pipe wrench and subsequently kicking his supervisor in the leg; and for directing profane and abusive language to his supervisor.

The genesis of these occurrences were apparently the fact that Claimant had called in and reported that he would be arriving late for work. Shortly thereafter, and before Claimant arrived, the supervisor determined that he would need to utilize another employe on overtime rather than await the Claimant's arrival. The supervisor testified that he immediately telephoned the Claimant's home and so advised his wife, who said she would give him the message. Claimant nevertheless reported for work. When told that he was not needed, there followed the events of which the investigation determined that he was guilty.

There is no question at issue here as to whether the Claimant was entitled to work the portion of his shift for which he was available. If he felt that he had been improperly denied the right to work, his ready remedy was to file a claim for such hours, rather than resorting to self-help.

The severity of the penalty, which could be considered appropriate standing solely on these events, is further supported by the Claimant's disciplinary record which shows two previous suspensions for similar types of behavior.

A W A R D

Claim denied.

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 January, 1979.