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NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 7945  
Docket No. 7876  
2-CMStP&P-MA-'79

J. W. GOHMANN

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  
 {  
 { Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Dispute: Claim of Employees:

1. That Machinist Helper Roger Pryor, hereinafter referred to as the Claimant, under the current agreement was improperly removed from service on December 28, 1976, and subsequently terminated from service effective January 26, 1977; furthermore that such discipline assessed to Claimant was unwarranted, unjust, capricious in manner and extremely excessive and harsh.
2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Carrier, be ordered to: (a) Restore the Claimant to service with all seniority rights unimpaired. (b) Compensate Claimant for all time lost commencing December 28, 1976. (c) Make Claimant whole for all vacation rights. (d) Pay the premiums for hospital, surgical and medical benefits for all time held out of service. (e) Pay the premiums for group life insurance for all time held out of service.

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.

Carrier issued to the Claimant two sets of charges. One concerned Claimant's actions on December 16, 1976, as follows:

- "1. Failure to protect your job assignment at the starting time of 7:00 a.m., on December 16, 1976.

- "2. For being insubordinate to your immediate Foreman, Mr. A. H. Tesch, on December 16th, 1976, during the period of approximately 7:10 a.m. to 7:40 p.m., you did refuse verbal instructions resulting in delay to Diesel 701, and in addition caused an overflow of lube oil resulting in a direct loss of lube oil and creating a messy problem within the locomotive and in the pit, under the locomotive."

The other concerned Claimant's actions on December 28, 1976, following which he was removed from service pending an investigative hearing. These charged were as follows:

- "1. Failure to properly carry out your job assignment in that you were told to fill engine 125-C with water on train #122 on track #5 in the Milwaukee Diesel house on December 28, 1976 at approximately 7:00 a.m.
2. Being insubordinate to your immediate supervisor, A. Tesch, in that you refused to bring in the water hose after filling engine 125-C with water when told to do so from outside the Diesel house on #7 track on December 28, 1976 at approximately 9:45 a.m."

An investigative hearing was conducted, reviewing the incidents involved in detail. The record shows that the Claimant received a full and fair hearing.

Review of the record indicates that the Claimant was clearly guilty of the acts of which he was charged. On December 16, 1976, he reported to work ten minutes late. He was repeatedly and deliberately insubordinate to his supervisor; failed to perform his work as assigned; and, as a result, was at least in part responsible for delay in the Carrier's operations and wasteful of a large quantity of lubricating oil.

If this were not sufficient, his actions on December 28, 1976, in reference to a standard assignment of checking on water level and filling an engine with water, he was not only insubordinate but totally lacking in the workmanlike conduct which can be expected of a trained employee.

The Board finds no basis on which to fault the Carrier in terminating the Claimant's service. If further support is needed as to the justification of the severity of the disciplinary penalty, it is readily available in Claimant's past record, which included: a previous dismissal from service for insubordination and reinstatement on a leniency basis; deferred suspension for disrespect to a Carrier officer; and two warnings and a 30-day suspension for absenteeism.

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 30th day of May, 1979.