

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { International Association of Machinists
{ and Aerospace Workers
{
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. The Chesapeake and Ohio Railway Company arbitrarily and capriciously suspended Machinist Howard Johnson from service for a period of thirty (30) days in connection with investigation held on June 14, 1977.
2. Accordingly, Machinist Howard Johnson should be compensated for all time lost, credited for all fringe benefits attached to his employment, and his record cleared.

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.

This is a companion case to Docket 7903 which was considered by this Board at the same time and decided in Award .

The claim in the instant case is in all basic respects similar to that present and disposed of in Award 8082 except that it involves a different Claimant.

The matters and issues in the instant case are identical to those raised and disposed of in Award 8082. We reaffirm our findings in Award 8082, for even stronger reasons based on the record of the case involving the Claimant herein.

In Award 8082 we sustained the claim on the ground, among others, that Mr. Pollice, the employee allegedly threatened with bodily harm, testified that he saw the Claimant charged in that case but that Claimant neither approached nor threatened him. In the instant case, Pollice stated, in a statement submitted to the company the day after the alleged incident: "I was later told by my co-workers, which I did not see there, that

Howard Johnson, Jr. was also present".

On the basis of this statement, we cannot sustain the charge of threatening bodily harm levelled by the company against Claimant.

With respect to the other charges filed, our findings are the same as in Award 8082 and for the same reasons there set forth. Accordingly, we will sustain the claim and direct that Claimant shall be entitled to recover the loss in his pro rata rate of pay for the period of his suspension, less any compensation which he may have earned in other gainful employment during said period.

A W A R D

Claim sustained in accordance with the above Findings.

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 12th day of September, 1979.