

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute:

- (International Association of Machinists and
Aerospace Workers
- (
- (Staten Island Rapid Transit Operating Authority

Dispute: Claim of Employees:

1. That Machinist J. Rutigliano has been unjustly dealt with in that the discipline of four (4) working days and two (2) hours suspension rendered as a result of trial and investigation of Case M-1-76 is arbitrary and capricious.
2. That, accordingly, the discipline of four (4) working days and two (2) hours suspension be rescinded, that Machinist Rutigliano be made whole for the four (4) working days and two (2) hour suspension actually served and that his record be purged of all material relating to this incident.

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.

Claimant was an upgraded machinist working at Carrier's Clifton Shops on November 12, 1976, regular hours 7:30 am to 4:00 pm. Sometime on the morning of that day Claimant received a telephone call at work from his insurance agent and was granted permission to leave his assignment in order to conduct personal business regarding an insurance policy over the shop telephone. That afternoon Claimant was assigned to install brake shoes on a "hi-lined" train which was needed to service the afternoon rush hour commuter traffic. At approximately 2:10 pm Claimant came into the shop office and asked to use the telephone again to call his insurance agent. The Mechanical Department Supervisor told Claimant that the hi-lined car was needed for the rush hour service and that he should finish that job first and then he could make his telephone call. Claimant refused to accept this order and insisted several times that he wanted to make the call "then and there". After several times being refused permission, Claimant announced in words or substance that since he was denied permission to use the office telephone he was leaving the property to make the call with or without permission.

Thereupon Claimant walked out of the office, left the property and walked across the street to a public telephone from which he made his call. He returned to the property approximately ten minutes later whereupon he was suspended from service. Following notice and investigation Claimant was assessed discipline of four (4) days actual suspension, plus the two (2) hours of suspension.

As we view the present record, the evidence supports a conclusion that Claimant was insubordinate to his duly authorized superior. Carrier has presented a prima facie case that Claimant disregarded and disobeyed a reasonable order by the Mechanical Department Supervisor. The burden is upon the employee to rebut this showing, if he can, by evidence of justification. In our judgment he has failed to do so. Claimant alleges that the telephone was of an emergency nature and that he "had to" make it at 2:15 pm and not later. He has failed to present persuasive evidence that such was the case. More importantly, he presented no such evidence to his supervisor.

Accordingly, the order to finish his work before making the call is reasonable on its face and Claimant has shown no justifiable reason for refusing it. In the circumstances the penalty was not unreasonable and in fact seems to be intended as remedial rather than punitive. There is no basis for us to reverse or modify the discipline imposed by Carrier.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of March, 1980.