

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
{
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Kermit L. Medley to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
2. That Machinist Kermit L. Medley be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1(e) of the prevailing Agreement which was effective April 1, 1976.

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 dismissed from service following an investigative hearing based on the following charges:

1. Reporting one hour and twenty-five minutes late for your 3:00 p.m. Machinist assignment, position #10, when you reported at approximately 4:00p.m., while assigned as a Machinist, 3:00 p.m., Stanley Diesel.
2. Your failure to perform the duties assigned to you by your foreman, W. H. Silvis, on May 15, 1978, at approximately 4:25 p.m., while assigned as a Machinist, 3:00 p.m., Stanley Diesel.
3. Conduct unbecoming an employee when you made threatening remarks to your foreman, W. H. Silvis, in the Shop Superintendent's office, at approximately 4:30 p.m., May 15, 1978.
4. Leaving your job assignment without permission on May 15, 1978, while you were assigned as a Machinist, 3:00 p.m.

The Organization argues that the Claimant did not receive a fair and impartial hearing because "Claimant's past record was introduced into the trial". This argument is groundless. The hearing record shows simply that, following completed testimony on the current charges, the Claimant's disciplinary record was noted. Disciplinary action against the Claimant must, of course, stand or fall based upon the investigative hearing. Once it is determined by the Carrier that disciplinary action is warranted, it is a matter of prudence and desirable procedure for the employer to review the employee's record to determine the severity of the penalty. This can operate in the employee's favor as well as against his interest. A clean past record may well lead the employer to invoke a mild penalty in the hope of instructing the employee for the future. A record of progressive discipline for similar offenses in the past, on the other hand, may well determine a non-discriminatory harsher penalty. In this instance, the investigative hearing itself was devoted exclusively to the current charges and was therefore properly conducted.

Claimant did call in to state that he would be tardy and was advised that he had to report within two hours of starting time (which he did) to be permitted to work. This does not eliminate the fact that Claimant failed to report at his assigned starting time.

More significantly, the record is clear that the Claimant not only refused to perform the alternate assignment given to him because of his tardiness but in fact left work without permission. The record also shows, without contradiction, that he made a disparaging and disrespectful threat to his supervisor in the presence of witnesses.

In his defense, the Claimant testified that his foreman had made uncivil and "harassing" threats to him when he arrived for work. The foreman denied making such statements. Whether true or not (there were no other witnesses to verify what occurred), there is no excuse for the Claimant to refuse to carry out the assignment given to him and even less for simply walking off the job. The Board finds that the Carrier's allegation of insubordinate conduct was sufficiently proven.

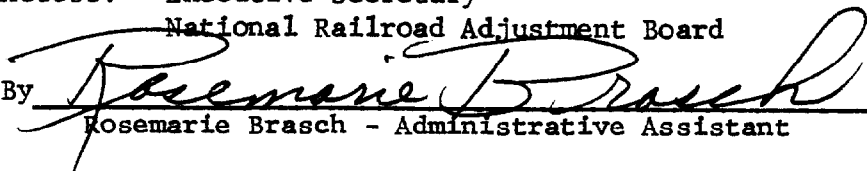
Claimant's past record over a brief period of employment shows two disciplinary suspensions and a reprimand based on his personal conduct. These lend support to the Carrier's degree of penalty in the present instance.

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 8th day of October, 1980.