

The Second Division consisted of the regular members and in addition Referee Clarence H. Herrington when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the Controlling Agreement Machinist Raymond D. Morgan was unjustly removed, suspended from the service of Consolidated Rail Corporation, from June 26, 1979 through July 18, 1979, inclusive, this action was unjust, unfair, arbitrary and capricious, in violation of Rule No. 6.
2. That accordingly, the Consolidated Rail Corporation be ordered to compensate Machinist, R. D. Morgan for seventeen (17) days, eight (8) hours pay each day at the applicable rate. Also, any overtime he may have made and other benefits occurring to his position that he may have lost.

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 employees 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.

The Claimant entered service of the Carrier on April 19, 1952. On June 26, 1979, the Claimant was employed as Maintenance Machinist at Carrier's Morrisville, Pennsylvania facilities with assigned hours of 7:45 A.M. to 3:45 P.M. At 8:10 A.M., on June 26, 1979, the Claimant's supervisor, when going through the lunch room, noticed the Claimant and a furloughed Machinist conversing. The supervisor asked what was going on and informed the Claimant that it was 8:10 A.M. and he should be working. A confrontation ensued and the Claimant was removed from service pending trial. In notice dated June 27, 1979, the Claimant was notified to attend trial on July 6, 1979, in order to answer charges in connection with the following:

"While on duty, as Maintenance Machinist at Morrisville, Pa., at approximately 8:15 AM on June 26, 1979, you were:

A. Insubordinate to General Foreman J. T. Steinbeiser.

B. Threatened General Foreman J. T. Steinbeiser with bodily harm."

In notice dated July 18, 1979, the Claimant was notified that he was disciplined by "Suspension June 26, 1979 to July 18, 1979, inclusive" for the offense with which he had been charged.

A close study of the entire transcript reveals that Claimant received a fair and impartial hearing at the trial held on July 6, 1979. The Organization contends that the Carrier violated the Claimant's rights by holding him out of service pending trial. This Board cannot agree with this contention. Numerous awards by this Board have held that the Carrier has a right to determine whether an employe charged with a serious violation of the rules shall be held out of service pending the investigation. Rule No. 7(e) provides an employe shall be made whole for time lost if exonerated. Therefore, the Claimant was not deprived of any rights guaranteed him by the Agreement.

The records disclose substantial evidence to warrant the findings of the Carrier. There was some conflict in the evidence cited by Claimant's fellow employes. However, the Board has uniformly held that the credibility of the witnesses and the weight to be given to their testimony is for determination by the hearing officer. The Board, after careful deliberation, is unable to find that the judgement of the Carrier on the penalty assessed was arbitrary, capricious or in any way an abuse of managerial discretion.

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 Brach - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of February, 1982.