

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Association of Machinists and  
                          { Aerospace Workers  
                          { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated Rule 39 of the schedule "A" agreement made between the Illinois Central Gulf Railroad and the International Association of Machinists, AFL - CIO, when they suspended machinist C. E. Summers from service for thirty (30) days beginning November 16, 1978 through December 15, 1978.
2. That accordingly, the carrier be ordered to pay him all wages lost as a result of the carrier's violation of the controlling agreement, including overtime losses.
3. Make claimant whole for all holiday and vacation rights.
4. Pay premiums on Travelers Policy GA 23000, Illinois Central Gulf Hospital Association, Provident Insurance Policy R-5000 and Aetna Dental Policy GD-12000.
5. Make claimant whole for all losses and clear his service record of all reference to the 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 employed as a machinist at Carrier's Paducah, Kentucky, shop, with about ten years of service. On October 17, 1978 claimant was instructed to attend an investigation on October 23, 1978, on the charge:

"to determine your responsibility, if any, for being involved in an altercation with a fellow employee at approximately 8:30 a.m. on Monday, October 9, 1978."

The investigation was scheduled and conducted on November 3, 1978. A copy of the transcript of the investigation has been made a part of the record. On November 15, 1978, Claimant was assessed discipline of thirty days suspension. We have carefully examined the entire record, and we find no support for the Organization's contention that the Carrier was in violation of Rule 37, Section (a) of the applicable Schedule "A" Agreement.

Based upon the evidence in the investigation, we consider that claimant Summers was responsible to a degree for the altercation with laborer Page. He did strike the laborer on the arm with a pair of gloves, but claims that he did this as the laborer was waving a lighted cigarette in claimant's face, and that he reacted by striking the laborer on the arm with his gloves. The laborer admitted pointing his finger in claimant's face. The laborer then drew a knife from his pocket, opened the blade and held the knife at his side. One witness testified that the knife had about a five-inch blade. There is also evidence that after drawing the knife, the laborer suggested that the matter could be settled off the property.

Award No. 1 of Public Law Board No. 2636, upheld the dismissal of the laborer, and stated in part:

"Regarding their contention ~~that~~ Summers (claimant herein) was the aggressor we do not see any evidence to this effect. While it is true that Summers struck Page (the laborer involved) with his gloves, it was clearly a response to an aggression on the claimant's part. Summers was responding to a pointing of a finger toward his face. In our opinion, Page was clearly the aggressor."

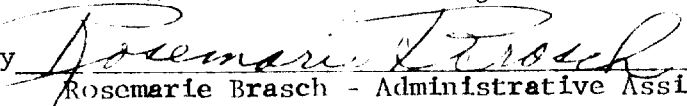
We find that some discipline was warranted against the claimant herein, but thirty days suspension was excessive. A reprimand or not more than ten days suspension would have been more appropriate. It appears that claimant had a satisfactory work record. We will award that the discipline be reduced from thirty days suspension to ten days suspension, and that claimant be paid for time lost in excess of ten days, the computation to be made in accordance with Rule 39 of the applicable Agreement. The organization has submitted no agreement support for Parts 4 and 5 of the claim and they are denied.

A W A R D

Claim sustained to the extent indicated in 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 24<sup>th</sup> day of February, 1982