

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. The Baltimore and Ohio Railroad Company arbitrarily and capriciously suspended Machinist Apprentice Melvin E. White from service for a period of thirty (30) days in connection with investigation held on March 1, 1979.
2. Accordingly, Machinist Apprentice Melvin E. White 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 employee or employees involved in this dispute are respectively carrier and employee 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, Mr. M. E. White, had been in the employ of the Baltimore and Ohio Railroad Company at the Glenwood Back Shop, Pittsburgh, Pennsylvania as a Machinist Apprentice for approximately one year and nine months when the incident in question occurred. On March 1, 1979 Claimant was notified to arrange to attend a formal investigation on March 9, 1979 in the Office of Manager, Glenwood Locomotive Shops of the Carrier, Pittsburgh, Pennsylvania. This notice, over the signature of Mr. J. H. Hantz, Assistant Superintendent Shops, stipulated that Claimant was charged with alleged insubordination by refusing to wear safety glasses, and that he had allegedly conducted himself in a manner unbecoming a railroad employee by using vile and obscene language to superiors. Claimant was also informed that he was to be held out of service pending the investigation. On March 27, 1979 Claimant was notified that he had been found guilty as charged by Carrier and that he was being given thirty (30) calendar days actual suspension to run from March 1, 1979 to March 30, 1979.

The only two issues of fact before the Board in the instant case are the following: (1) was Claimant given a direct order by a superior? and did he disobey it? and (2) did Claimant use abusive language to superiors? It is clear from the hearing notes that at about 8:00 A.M. on March 1, 1979 Claimant was given a direct order by Mr. W. L. Mathews, Assistant Shop Foreman, to put on

his safety glasses. The existence of this order is not in dispute. Whether Claimant obeyed this order or not is. Mr. Mathews stated in hearing that Claimant did not obey this order which is why Shop Foreman, Mr. W. A. Roll was called to the scene. Mr. Roll, in turn, stated in hearing that he then gave Claimant an order to put on his safety glasses and that Claimant did so. There would have clearly been no reason for Mr. Roll to tell Claimant to put on his safety glasses if he had been already wearing them. Furthermore, two of the witnesses called to the hearing stated that Claimant did not put on his glasses immediately when asked to do so by Mr. Mathews. Claimant, on the other hand, contravenes this testimony by the above four witnesses cited. With respect to the second issue in this case, both the hearing record and the personal written statement of the Claimant himself support the contention, whatever the Claimant's motives which are not at question here, that the Claimant did address his superiors in language which, if not considered vile and obscene by some was, at the very least, less than polite and considerate.

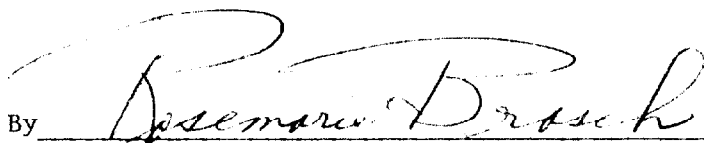
It is not the role of the Board, which serves an appellate function, to resolve issues of credibility, nor to substitute its judgment for that of Carriers in discipline cases. Its role is to determine if there is substantial evidence to sustain a finding of guilt (See inter alia Second Division Awards 7325, 7912, 7955 and 1809, 6048 and 6372). It is the Board's view that this test of substantial evidence has been met in the instant case on both issues under consideration.

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 3rd day of March, 1982.