Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9385
Docket No. 9429
2-UP-MA-'83

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Union Pacific Railroad Company

Dispute: Claim of Employes:

1. That under the terms of the current Agreement Machinist B. A. Calcaterra (hereinafter referred to as Claimant) was improperly dismissed from service on August 28, 1980.

2. That, accordingly, the Carrier be ordered to compensate Claimant for all wage loss from date of dismissal to November 14, 1980, when he was restored to service without prejudice to claim for wage loss.

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.

The Claimant, a machinist in the Carrier's Pocatello, Idaho, shops, was, as a result of an investigation held on July 30, 1980, removed from service for failure to perform his duties in a safe manner resulting in injury to his back. It was also held Claimant failed to follow orders from his doctor. Claimant was reinstated to service on November 14, 1980, with the understanding that action would not prejudice the positions of either party.

On July 22, 1980, Claimant and another machinist were involved in placing several diesel parts on a westbound CAH. They backed a pickup to the side of a diesel locomotive in order to place the cylinder head, liner, and piston in the compartment room. Claimant knelt on the running board to receive the parts from the other machinist who was standing in the bed of the pickup truck. In lifting the cylinder head to the running board, Claimant injured his back. Upon his return to the shop area, he reported the injury and filled out the required accident report. On July 23, 1980, he was examined by his physician, who prescribed muscle relaxant and bed rest. On July 24, 1980, at approximately 12:45 P.M., two Carrier representatives went to Claimant's home and spoke with his wife, who informed them Claimant was not at home.

The Organization asserts Claimant was improperly dismissed from service in that he did not perform his work on July 22 in an unsafe manner nor did he fail to follow his physician's instructions. Carrier believes Claimant was afforded every opportunity to perform his work safely, which included receiving instructions on proper lifting and being provided the assistance of another employe.

The testimony of the hearing established that Claimant had received prior instruction on the proper method of lifting, which involves using the legs and arms. Claimant was admittedly in a kneeling position. This Board recognizes that on July 22, 1980, alternative methods might have been employed by the Carrier under the circumstances. Notwithstanding, our function is clearly prescribed, and we can only decide from the record if there is substantial evidence to support both charges. In this case, we find the record supports the charge that Claimant failed to perform his duties in a safe manner. The second charge, however, requires a contrary finding. There is no evidence that bed rest requires total confinement. Furthermore, the uncontroverted testimony of Claimant established he was at the Carrier's dispensary at 1:00 P.M. on July 24, 1980, filling out insurance forms. Having reviewed the record in this case, the Board can find no reliable evidence to support the charge Claimant failed to follow his doctor's instructions. Accordingly, the discipline of the Claimant is reduced to a thirty day suspension. Claimant is to be compensated for the time lost exceeding the suspension, less all wages received by him from other sources.

A W A R D

Claim sustained in part, as set forth in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of February, 1983.