

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
(
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) be ordered to make whole Machinist C. Walsh, and compensate him for all pay and benefits that may have accrued and were lost during a 9 day suspension from service in accordance with the prevailing Agreement dated September 1, 1977 as subsequently amended. (7 working days were 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, Clarence Walsh, is a machinist at the Carrier's Sunnyside, New York, Yard with service since November 1, 1979. On December 9, 1980, Claimant was notified to report for an investigation on December 17, 1980, which was issued in connection with a charge of insubordination, violation of Rule I. Claimant was withheld from service pending the investigation. On the day after the investigation, December 18, 1980, Claimant was informed he was assessed a 7 working day suspension, with the time he was held out of service to apply.

The Organization has advanced this claim on the basis the Carrier has failed to meet the burden of proof through its failure to produce the necessary evidence to support the charge.

Review of the record herein does not confirm the position of the Organization. It is the opinion of this Board that the record developed by the investigation establishes Grievant had at least three opportunities to comply with the instructions directing him to Market Tower. It is a fact that this Claimant did not tell either the Engine House Foreman or the General Foreman he would not do the work. Notwithstanding, the evidence clearly shows that the Claimant's actions and responses could reasonably be interpreted as a refusal. His non-compliance is manifested by his statements. His first reaction to the order was to tell the Engine House Foreman he "didn't want to go" and that wanted to be back by 8:00 A.M. Sent to the General Foreman, the Claimant sought assurances that he

would be back at 8:00 A.M. because he had a "previous appointment". The operations of the Carrier require compliance with issued orders. Compliance by an employee is not discretionary.

We conclude the imposition of the 7 working day suspension for violation of Rule I was proper and in accord with the facts developed at the investigation.

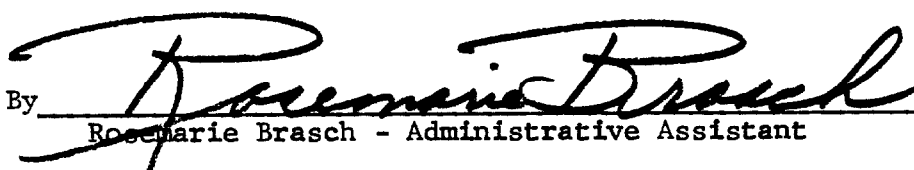
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

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