

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

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

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist G. R. Heckman to service and compensate him for all pay lost up to time of restoration to service at the prevailing machinist rate of pay.
2. That Machinist G. R. Heckman be compensated for all insurance benefits, vacation benefits, Holiday benefits and any other benefits that may have accrued and were lost during this period in accordance with Rule 7-A-1 (e) of the prevailing agreement effective May 1, 1979.

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.

This case involves the dismissal of a 3 year machinist, G. R. Heckman, on a charge of insubordination, being out of his assigned work area, and using abusive and threatening language to a supervisor. We find, despite the refusal to grant a second postponement, that the investigatory hearing was fair and that claimant had full opportunity to defend his case.

The record shows that the incident occurred between 2:30 and 3 p.m. quitting time on September 9, 1980. When initially instructed to pick up some brake shoes claimant refused telling his supervisor to tell the General Foreman to go f--- himself. Claimant does not specifically deny having said this, but alleges it was said in a joking manner and further claims that others were standing around when the order was given and he didn't know that the supervisor meant for him to do the job. The supervisor walked back to where the General Foreman was standing and reported claimant's comment. The two of them then approached claimant, but claimant saw them coming and ran off and continued running around the shop avoiding them until a few minutes before quitting time when they met near the clock. A heated discussion ensued. The supervisor repeated claimant's earlier refusal and comment and the General Foreman told him he would be written up for insubordination and using abusive language. Claimant clocked out and left. The following morning

he was given notice that he was being held out of service and notice of an investigatory hearing. His supervisor testified that he had already left the premises before he could be served with notice on the afternoon of the incident and that he could not be reached at his address on file.

Petitioner alleges that claimant's conduct in the confrontation by the clock was provoked by the General Foreman's angry manner. Even if this were so it does not go to the central issue which is the earlier refusal and comment and his avoidance of supervision immediately thereafter. There is no corroboration in the record for claimant's assertion that he did not know the order was meant for him or that it was a joking matter. Nor does the fact that his work area covers the whole shop provide an excuse for running around when he had been given an assignment.

Petitioner alleges that Carrier acted arbitrarily and capriciously in not removing claimant from service until the day after the incident. We disagree with Petitioner's claim that there was ample time to do so and find that in view of the inability to reach claimant at his address on file, it was reasonable to notify him at the next earliest opportunity -- the next morning.

After a careful study of the record we are of the opinion that the evidence supports the finding made by the Carrier. In view of the seriousness of the offense we do not find that the penalty of dismissal was excessive or arbitrary.

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 15th day of June, 1983.