

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  
( The Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That under the terms of the Agreement Machinist J. L. Staples was unjustly suspended from the service of the Norfolk and Western Railway Company for a period of thirty (30) days beginning on the date of December 15, 1980 and ending on the date of January 13, 1981.

2. That accordingly the Norfolk and Western Railway Company be ordered to compensate Machinist J. L. Staples in the amount of eight (8) hours at the pro rata rate for each day of his work assignment December 15, 1980 through January 13, 1981, inclusive.

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 employes 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 in Carrier's Millright Gang at Decatur Shop, Decatur, Illinois, hours 7:00 A.M. to 3:30 P.M., Monday through Friday. On October 7, 1980, claimant was notified to attend formal investigation on October 16, 1980:

"This is to advise that you are hereby notified to report to Room 200, Condit Street Office Building, 1715 S. Condit St., Decatur, Illinois, at 9:00 A.M., Thursday, October 16, 1980, for a formal investigation in connection with your performing unassigned and unauthorized duties in that, you were observed at approximately 1:00 PM, on October 2, 1980, cleaning a linked chain not belonging to or used on any locomotive or Locomotive Shop equipment in the Gray-Mills Clean-O-Matic cleaning vat, located in the east wing of the Locomotive Shop.

"If you desire to have your duly authorized representative and/or witnesses present at this investigation, please arrange for their presence."

The investigation was conducted as scheduled and on December 11, 1980, claimant was notified of discipline imposed of thirty days actual suspension, beginning December 15, 1980. A copy of the transcript of the investigation has been made a part of the record.

During the course of the investigation, in the appeal on the property, and in submission to this Board, the Organization complains because a tape recorder was used to record the proceedings. We see no proper basis for such complaint. From our experience, the use of tape recorders to record investigations seems to be a common practice. See also Third Division Award No. 15890 and Second Division Award No. 9685. No prejudice to claimant has been shown. The contention was also made that the transcript was not complete and accurate; however, no evidence was presented to support such contention.

Complaint is also made that the conducting officer permitted a Carrier witness to question the claimant. The record shows that witness Gray, the General Foreman, did ask claimant a couple of questions. While we do not think that this was proper, at the same time we do not consider it of sufficient significance to invalidate the proceedings. The record also shows that claimant's representative testified and also questioned other witnesses. No complaint was raised as to this.

There was also a time limit issue raised by the Organization. Following the notice of discipline to claimant, an appeal was hand delivered to Foreman Malone dated December 22, 1980. Mr. Malone replied on February 17, 1981, and the record shows that such reply was received by the Organization on February 20, 1981, or on the sixtieth day from appeal. The reply met the time limit requirement. The Organization complains tht Foreman Malone's response, dated February 17, 1981, did not answer all contentions raised in the appeal. We do not consider it necessary that every issue raised on appeal be separately addressed. The Foreman's reply concluded:

"Your request and claim are not supported by the rules of the current agreement and are respectfully declined."

The response constituted a "reason" under Time Limit on Claims Rule of August 21, 1954. The rule does not require a "good reason," a "valid reason," or an "acceptable reason".

None of the procedural issues raised by the Organization, or all of them, constitute sufficient grounds to invalidate the proceedings.

As to the merits of the dispute, there was substantial credible evidence adduced in the investigation in support of the charge against claimant. While there were conflicts in the testimony, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. The Board may not reverse the Carrier's determination merely because of conflicts in testimony. The discipline imposed was not arbitrary, capricious or in bad faith.

Form 1  
Page 3

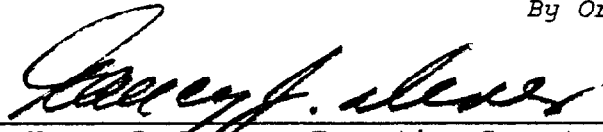
Award No. 9969  
Docket No. 10020  
2-N&W-MA-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
\_\_\_\_\_  
Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984