

The Second Division consisted of the regular members and in addition Referee Francis M. Mulligan 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 K. E. Rogers 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 K. E. Rogers 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 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.

At the time of the incident, Claimant had approximately ten (10) years' service with the Carrier. Claimant was discharged for insubordination based on an incident which took place on June 19, 1980. The trial was held on November 24, 1980 and Claimant was discharged on December 16, 1980. Carrier's case against Claimant involves failure to follow a direct order. According to the Carrier's testimony, the order was given to the Claimant three (3) times. Claimant was told to go to the Carrier's Collinwood Yard. Carrier, through its Equipment Foreman David E. Mack, testified that Claimant was ordered to go to Collinwood to work on a tamper which Claimant had fixed earlier in the day. Claimant refused to go to the Collinwood Yard because Claimant's wife was hemorrhaging and Claimant wanted to take his wife to the Clinic immediately after work. If claimant was forced to go to Collinwood and work overtime, then Claimant would not be able to take his wife to the Clinic after work. The Foreman, Mr. Mack, knew that Claimant's wife had delivered a child after the incident took place, but at the time of the incident was unaware of the specific problems regarding Claimant's wife. Claimant was told as indicated on several occasions to go to the Collinwood Yard. Claimant was first told at 2:00 p.m. and told again at 3:00 p.m. At this time Claimant advised the Foreman that his wife had to

be taken to the hospital. The Foreman testified that the Collinwood Yard is between twenty (20) and twenty-five (25) minutes away from Claimant's job site and that the Foreman did tell Claimant to advise him as to the problem when the Claimant arrives there and that the Claimant was not being requested to work overtime, but merely to go to Collinwood and fix the problem. Ultimately, without Claimant's assistance the tamper problem took between fifteen (15) and twenty (20) minutes to fix.

Claimant's position is that he was afraid he would be forced to work overtime if he went to Collinwood and that the tamper problem was not easy to correct. He also testified that it was approximately a forty-five (45) minute drive to Collinwood. He also testified that he had at times been hung up at Collinwood for approximately two (2) hours because of switching cars. To be precise, Claimant did not have an appointment at the Clinic but the Clinic is the type of place where you come in and wait your turn and Claimant wanted to arrive before 5:45 p.m. so that his wife would be seen that evening.

Claimant, for refusing to obey the order, was told to report off of work. Thereafter, a series of phone calls took place between the Carrier officials and the Claimant's home. The Carrier advised the Claimant to report to work the next day under the agreement with the Organization. There seems to be some problem in the record as developed as to whether or not Claimant went immediately to the doctor or went to his attorney after he came home from work. It would appear that Claimant went both to the Clinic and to his attorney. Claimant, following the incident at work, was faced with both an economic problem and a family emergency. The testimony seems to indicate that the Claimant was in no great hurry to go to the Clinic. Claimant's testimony filled in the gaps on this issue. During one phone call from the Carrier, Claimant was in the shower and during another phone call he was not home and someone from the Carrier was told that he was seeing his lawyer. Claimant's testimony was that he went both to the lawyer and to his wife's physician at the Clinic. As long as he arrived at the Clinic before 5:45 p.m., the doctors would take his wife, and he was able to make this appointment after seeing the lawyer. As indicated, because of possible action against him by the Carrier, Claimant was faced with caring for his wife and worrying about his job.

Based on the record, the discipline imposed, namely, termination, is too harsh. There is no doubt that Claimant should have carried out the Carrier's order and reported to Collinwood. The Carrier never told him he would have to work overtime. However, Claimant was afraid of being held up with cars being switched and was fearful of not arriving at the Clinic on time with his wife, who was having difficulties with her pregnancy. However, on this issue Claimant did not make a proper full disclosure to his supervisor. As indicated, the discipline was too harsh in light of all the facts developed in the record. Claimant should be restored to service with seniority unimpaired, but without back pay.

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Award No. 10006
Docket No. 9702
2-CRC-MA-'84

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: *Nancy J. Dever sh*
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.