

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. The Norfolk and Western Railway Company arbitrarily and capriciously disciplined Machinist O. D. Creasy when he was assessed a five (5) day deferred suspension following investigation held at Roanoke, Virginia, on February 2, 1983.

2. Accordingly, the discipline imposed should be reversed and the record of Machinist O. D. Creasy cleared.

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 employees 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, O. D. Creasy, was assessed a five-day deferred suspension following an investigation held on February 2, 1983. The Claimant is a Machinist for the Carrier at their Roanoke, Virginia shops and has been in service for fifteen years.

The record shows that the normal duties of the Claimant were to overhaul engines. On December 31, 1982, he was assigned to the wheel shop because he was the lowest seniority person available. The Claimant was specifically assigned to operate the wheel mounting press, which he had never done before. The record shows that out of 22 pairs of wheels mounted, twelve pairs were mounted incorrectly. Rule 37 of the Agreement between the Carrier and the Organization calls for a fair hearing by a designated officer of the Carrier, and it requires that if an employee has been unjustly suspended, such Employee shall be reinstated with seniority rights unimpaired.

The Organization argued that the Claimant was assigned to a job to which he was not familiar, that he was given poor instructions by the Supervisor of the Wheel Shop, and it was those instructions that caused the Claimant to have a problem. In addition, the Organization argued that the wheels were not checked at the required number of points and that they could have been in gauge at other points, which would have complied with the Carrier's instructions.

The Carrier argued that the claim has a procedural defect in that on the property, the Claim was for the removal of the five-day suspension from the Claimant's record, the discipline be reversed, and the Claimant's record be cleared. While the claim before the Board states that the Carrier acted in an arbitrary and capricious manner when it disciplined the Claimant. In addition, the Carrier argued that its instructions were proper, that the Claimant had served in an apprenticeship and he was an experienced Machinist, that he should have had enough knowledge and experience to know if he was performing the duties properly, and at no time did he contact his Supervisor regarding the performance of this particular job. Finally, the Carrier argued that the punishment rendered was not an abuse of the Carrier's discretion, the Claimant did not lose any time in that this was a deferred suspension, and that the Carrier's conduct should be completely vindicated by the Board.

The Board, upon review of all of the evidence presented, finds that the Claimant was given a fair and impartial hearing as called for in the rule, and the claim by the Carrier of the procedural defect is not allowed. The claim on the property is substantially the same as the claim before this Board. The concern of the Organization is that the suspension be removed from the Claimant's file. It is up to the Board to determine whether or not the Company acted capriciously and arbitrarily. With respect to the merits of this case, the Board, finds that the Carrier, through its supervision, failed to properly instruct this Employee. In addition, there were problems with the machine that the Claimant was assigned to operate and the entire record shows that the Carrier failed to prove conclusively that the Claimant was derelict in his duties. Therefore, we will find that the claim should be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 14th day of August, 1985.