

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard System Railroad violated the controlling agreement when it unjustly suspended Machinist B. R. Allen for 15 work days beginning January 2, 1982 and ending January 22, 1982.
2. That accordingly the Seaboard System Railroad be ordered to compensate Machinist Allen for all pay and benefits lost (made whole) as a result of the above 15 work days suspension.

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.

The Claimant is employed by the Carrier as a Machinist at its Waycross Shops, in Waycross, Georgia. He has a seniority date of August 6, 1976. Following an investigation that was held on October 13, 1981, the Claimant was assessed fifteen (15) days disciplinary suspension for violating Rule 12 of the Rules and Regulations of the Mechanical Department "pertaining to *** dishonesty *** willful neglect", in carrying out his assigned duties on September 20, 1981.

Assistant Department Foreman Strickland testified that the Claimant was "dishonest" in the performance of his duties as a Machinist on September 20, 1981 "first, in telling me he did not know how to run the machine. Second, knowing he needed a pair of wheel gauges to do the job and not asking for a pair". The Claimant's statement that he "did not know how to run the machine" is clarified by the following exchange on direct examination of Assistant Department Foreman Strickland.

"Q. You stated that Mr. Allen said that he could not run the machine and he said that you knew he could run the machine. Isn't it a fact that both of you were joking at the time?

A. Yes sir, it is possible that it would have been said in a joking manner. But, how do you know when one is joking?

Q. You carried it on as a joke at that time?

A. Yes sir."

Thus, the Claimant's remark was intended as a joke and Assistant Department Foreman Strickland accepted the comment as a joke. Underlying the banter between them is the fact that Assistant Department Foreman Strickland trained the Claimant in the operation of the machine several years ago.

Turning to that aspect of the dispute between the parties over the Claimant "knowing he needed a pair of wheel gauges to do the job and not asking for a pair", it should be underscored that the Claimant "is not assigned to the wheel truing machine by Bulletin." Assistant Department Foreman Strickland did "not exactly" know how long it had been since the Claimant had run the machine on a regular assignment. As the Claimant recalled, September 20, 1981 "was the first time in approximately three or four years" that he had operated the machine; he was not as familiar with the machine as he would have been, if he "had worked it say previously a day or so ***." The Board finds that the evidence supports the conclusion that the Claimant forgot that he needed a pair of wheel gauges because it had been a "long term of time" that he regularly worked the job. Furthermore, Assistant Department Foreman Strickland "felt" that the Claimant had kept the wheel gauges because of "his past wheel machine experience". He thought "he could have still had a set". However, the Claimant unequivocally indicated that he "was instructed to give it (the gauges) to the next man who came on the job." He added that "the man leaving the job *** has no further use for the tools". Since it was "so long since (he) had worked the wheel machine, (he) was not immediately aware (he) needed one." The Claimant's testimony is credible. Thus, the Board is persuaded that the Claimant was not "dishonest" in the sense that he was untruthful or lied in the performance of his duties as a Machinist on September 20, 1981.

The record also discloses that the Claimant was not guilty of "willful neglect" in carrying out his assigned duties on September 20, 1981. The Claimant carried out Assistant Department Foreman Strickland's assignment which was limited to finishing the wheels on the 8092 and truing the wheels on the 1844. It is true that the Claimant did not record the wheel data in the log book at the wheel machine. However, the log book was not mentioned

in the Claimant's assignment and was never disclosed by Assistant Department Foreman Strickland to the Claimant prior to the close of the shift in question. It is of some weight that near the end of his shift Foreman Strickland elected to accept the Claimant's explanation that he did not have a wheel gauge by stating "okay, thank you" and then left in a huff." The Board has inferred that the charge against the Claimant of "willful neglect" in carrying out his assigned duties" by "not recording the wheel data in the log book at the wheel machine", is not supported by the record.

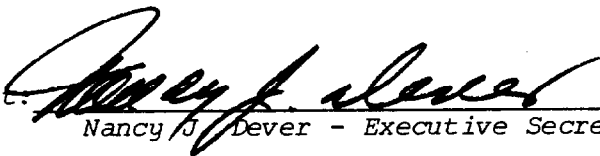
Based upon the record, the Board concludes that the Carrier failed to carry its burden of proving that the Claimant was "dishonest" and committed acts of "willful neglect" in carrying out his duties on September 20, 1981.

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 11th day of September 1985.