

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

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

Dispute: Claim of Employees:

1. That the Southern Railway Company violated the controlling Agreement, Rule #34, but not limited thereto, and were arbitrary, capricious and discriminatory, when they unjustly suspended Machinist J. L. Hayes, Chattanooga, TN., from service for (30) calendar days, without pay beginning at 11:00 PM., July 12, 1984 and ending 11:00 PM, August 11, 1984.

2. That accordingly, the Southern Railway Company be ordered to pay Machinist J. L. Hayes for all lost time wages, with all his rights unimpaired and clear his record of the charge.

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 were given due notice of hearing thereon.

At the time of the occurrence giving rise to the dispute herein, Claimant was employed as a Machinist at Carrier's Chattanooga Diesel Shop, Chattanooga, Tennessee, with seniority from March 17, 1980. His assigned working hours were 11:00 P.M. to 7:00 A.M.

About 4:15 or 4:20 A.M. on June 28, 1984, Claimant was instructed by the General Foreman to go to the Load Test Building to assist another Machinist in changing out a governor on Unit No. 3115. About thirty minutes later the Machinist engaged in changing out the governor on Unit 3115 advised the General Foreman that no one had come to the load box to assist him in changing out the governor. The General Foreman then proceeded to locate Claimant and found him in the rest room, at which time he again informed Claimant that his assistance was needed in changing out the governor. Claimant did not show up at the load box, and the General Foreman then assisted the other Machinist in changing out the governor.

In accordance with the provisions of the applicable Agreement, a preliminary Investigation was conducted for Claimant at about 6:00 A.M., June 28, 1984, at which time Claimant was charged with insubordination for failing to carry out the assignment of assisting in changing out the governor on Unit 3115. For the offense he was assessed discipline of suspension from service for five days, beginning at 11:00 P.M., June 28, 1984. However the discipline was held in abeyance pending a formal Investigation requested by Claimant in accordance with Rule 34 of the applicable Agreement. Formal Investigation was conducted by Carrier's Superintendent on July 6, 1984, following which the discipline assessed as a result of the preliminary Investigation was modified to a thirty day suspension, all in accordance with that portion of Rule 34 reading:

"...The Carrier officer conducting the formal investigation shall receive all evidence, including testimony or statements of witnesses concerning the act or acts upon which the discipline was based, and he shall render a decision affirming, modifying (by increasing or decreasing) or revoking the prior disciplinary action...."

In the formal Investigation it was developed that the General Foreman did instruct Claimant to assist in changing out the governor on Unit 3115 about 4:15 A.M. on June 23, 1984, and, according to the General Foreman, Claimant's response was that he had completed his job instructions for the night, that the governor change-out was not his job, and that it was "accessory work." Claimant contended in the Investigation that his reason for not going to the location of Unit 3115 was because of sickness, that his "bowels were running off." The General Foreman testified that Claimant said nothing to him about being sick at the time that he instructed Claimant to assist in changing out the governor on Unit 3115, and that he said nothing about being sick until the preliminary Investigation. In the Investigation Claimant stated that he had not said anything to the General Foreman about being sick prior to being instructed to assist in changing out the governor. He further testified that he went to the bathroom two or three times during his shift. In one instance he said "...just twice for the night," and a few questions later stated "Three times altogether." Following the preliminary Investigation about 6:00 A.M., Claimant did not immediately go home, but remained to the end of his shift at 7:00 A.M.


Based upon our review of the entire Transcript of the Investigation, we find that the formal Investigation was conducted in a fair and impartial manner, and that there was substantial evidence to warrant the discipline that was assessed. We do not find Claimant's contentions regarding sickness to be persuasive. We note that Claimant was previously assessed a 15-day suspension in March, 1984, for failure to properly perform his duties. There is no proper basis for the Board to interfere with the discipline imposed. It was not Claimant's prerogative to decide for himself whether the work of assisting in changing out the governor on Unit 3115 was properly assigned to him. It was his responsibility to comply with instructions and complain later if he considered that his Agreement rights were violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.