

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

1. That the Grand Trunk Western Railroad violated the controlling Agreement dated September 1, 1949, as subsequently amended, when it unjustly assessed 15 demerits on Machinist Trainee J. J. Gulliver's service record for alleged conduct unbecoming an employee.

2. That the Grand Trunk Western Railroad be ordered to remove the 15 demerits from Machinist Trainee Gulliver's record as well as remove all reference to the investigation conducted on May 11, 1988, at Battle Creek, Michigan.

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.

On May 16, 1988, the Claimant, a Machinist Trainee at the Battle Creek Heavy Repair Shop, was assessed discipline of 15 demerit marks for conduct unbecoming an employee. This discipline was assessed following an Investigation on May 10, 1988, wherein the Claimant was accused of responding to a direct order by telling his Supervisor to "kiss my ass."

Based upon an examination of the record, the Board finds that there was substantial evidence to support the findings of the hearing officer. Further, the Supervisor was acting within the legitimate scope of his authority when he gave the Claimant an instructive order. The evidence does not establish that the Supervisor's conduct was provocative. The Board also finds that the Supervisor's initial reaction of ordering the Claimant to the office immediately after the incident further substantiates the Carrier's allegations. Additionally, the discipline was not excessive.

Form 1
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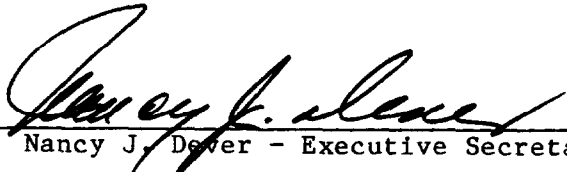
Award No. 11864
Docket No. 11699
90-2-88-2-196

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1990.