

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
of System Federation No. 6 - Railway Employees'
Department, AFL-CIO
The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That Stationary Engineer F. O. Harris was unjustly suspended from the service of the Belt Railway Company of Chicago for one day, beginning at 12:00 Midnight, March 16, 1974.
2. That accordingly the Belt Railway Company of Chicago be ordered to compensate Stationary Engineer Harris in the amount of one day's pay (8 hours) at the applicable straight time Stationary Engineers' rate of pay for March 16, 1974.

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 employe 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.

Stationary Engineer F. O. Harris was employed by Carrier in the Power Plant, Clearing Yard, Chicago, Illinois, assigned hours 12:00 A.M. to 8:00 A.M. Among other duties, Claimant was responsible for maintaining and monitoring a steam driven air-compressor.

The events leading up to this case occurred on March 1, 1974. There is a basic dispute concerning the interpretation and conclusion to be drawn

from certain operative facts of record, but the facts themselves are not contested, to wit: 1) Although the officially assigned shifts are 8:00 A.M. - 4:00 P.M., 4:00 P.M. - 12:00 Midnight and 12:00 Midnight - 8:00 A.M., employees in the Power Plant have a longstanding practice of beginning and closing their respective hours of duty one (1) hour early because of transportation connections to and from work; 2) On March 1, 1974 Claimant actually started his work at or about 11:00 P.M. and was relieved at or about 7:00 A.M.; 3) During Claimant's tour of duty at about 6:05 A.M. on March 1, 1974, a drive belt broke on the oil pump of the steam air compressor. Claimant slowed down the compressor without completely shutting it down, switched over to an electric compressor and changed out the broken belt. Claimant then completed routine oiling of the steam compressor, cut the electric compressor off and brought the steam compressor back up to normal at about 6:30 A.M.; 4) At approximately 6:40 A.M. the next shift employees, Chief Engineer James Flanagan and Watch Engineer Walter Kurtz arrived. Flanagan is the supervisor on the shift and Kurtz is Claimant's official relief. Flanagan changed into his work clothes next to the compressor. At 6:55 A.M. Claimant left work and Flanagan and Kurtz took over the machine; 5) A few minutes after 7:00 A.M. (the machine charts say 7:08 A.M., Mr. Flanagan testified to 7:02 A.M.) Chief Engineer Flanagan heard a knock in the compressor, stopped the engine, and found that the high pressure crank pin bearing had burned out. Under date of March 1, 1974, Mr. Harris received the following notice from Carrier's Chief of Motive Power:

"Please arrange to be in my office at 8:30 A.M., Monday, March 11, 1974 for investigation to determine your responsibility, if any, for failure to discover loss of lubrication promptly and failure to take action to shut down promptly on the steam-driven air compressor on morning of March 1, 1974. This resulted in the burning up of the high-pressure crankpin bearing and the loss of service of this compressor. If you desire representation, please so arrange."

Following investigation held March 11, 1974, at which Claimant appeared and was represented, he received another notice:

"You are suspended from actual service for one (1) day. Suspension period begins 12:00 Midnight, March 16, 1974 and ends 11:59 P.M., March 17, 1974."

Thereafter the instant claim was filed and failing resolution on the property comes to us for disposition.

There is no claim here that Mr. Harris was not afforded a fair investigation and the only issue for us is whether Carrier's disciplinary action was supported by substantial evidence on the record. Upon careful consideration of the entire record we must conclude that it was not. As we read the record, Carrier bases its disciplinary action on a conclusion that Claimant's changing the broken belt without shutting down the compressor was the proximate cause of the bearing malfunction some 45 minutes later at a time when Harris had already left the job. Aside from speculation and conclusory statements, Carrier has offered no direct evidence that such was the case. Absent some measure of direct proof of which this record is barren, the matter is rife for speculation as to the actual cause of the bearing failure - as even Carrier's chief witness seemed to recognize in the transcript of investigation:

"Q. Mr. Flanagan, based on your experience what do you consider to be the cause of the crank pin bearing failure?

A. According to the bearing running hot, it was not getting oil. when I came to work the bearing was getting hot, so it could be that maybe the oil line was plugged up or something to that effect. and that is all that I could see.

Q. Mr. Flanagan, what was the condition of that crank pin bearing when you last saw it on your previous tour of duty when you left the machine at 4:00 P.M. on 2/28/74.

A. The bearing was running cool.

Q. Mr. Flanagan, is there an oil pocket in the top of the connecting rod to catch and retain oil for the crank pin bearing?

A. Yes, there is.

Q. Mr. Flanagan, in your opinion, would the retained oil supply in the pocket be sufficient to run that bearing ten or fifteen minutes without damage?

A. I don't think so."

Carrier also suggests that Claimant's method of changing out the belt was a violation of promulgated safety rules and per se subject to disciplinary action. But if such be the case it is incumbent upon Carrier to present evidence of the existence of the rule and not unsupported assertions and allegations. Our study of the record corroborates the view by the Organization in its Rebuttal Statement to wit: "There is no evidence of record that the replacement of the belt in question while the compressor was operating slowly was unsafe, contrary to the Rules, or practices in such instances."

We must conclude that there is not sufficient evidence to support Carrier's imposition of discipline and the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of September, 1976.