

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

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

Dispute: Claim of Employees:

1. That the Seaboard System Railroad (formerly Seaboard Coast Line Railroad) violated the provisions of the applicable Agreement dated January 1, 1968, particularly, but not limited to, Rule 32, when it disciplined Machinist R. R. Coffman on June 21, 1983, by suspending him from service for ten days beginning June 23, through July 2, 1983, account alleged failure to properly perform his assigned duties on date of May 11, 1983.

2. Accordingly, that the Seaboard System Railroad Company be ordered to make the claimant (R. R. Coffman) whole for all losses incurred as a result of his suspension from the service and, in addition, clear his service record of all reference to the Company's charges of May 17, 1983, the subsequent investigation of May 26, 1983, and assessed discipline.

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 17, 1983, the Claimant and his co-worker were given notice by the Carrier's Assistant General Foreman to be present for a formal investigation on May 26 to determine the facts and place responsibility, if any, in not discovering that the bottom half of the gear case cover on Unit 7062 was missing during their inspection on May 11.

Both were Machinists employed on the second shift on May 11 at Uceta Shop, Tampa, Florida.

The transcript of the investigation discloses that the Claimant inspected and serviced the top portion of the locomotive unit and his co-worker inspected and serviced the bottom portion of the Unit.

After the inspection was completed, the Claimant signed the Inspection Report, releasing the Unit as O.K. for service.

On May 12 it was determined that the Unit should have a thirty-day inspection. The first shift Machinists were assigned to perform that inspection, during which it was discovered that the bottom half of the gear cover on the number five traction motor was missing. The gear cover was about ten inches wide and about four feet long. Parts of the gears showed excessive wear and no lubrication.

The Claimant's co-worker testified that on the morning of the day following, May 12, from what he saw of the pinion gear the gearcover wasn't there when he inspected the traction motor on May 11.

Following the investigation the Claimant was given a ten-day suspension and the co-worker was given a five day suspension.

Initially, the Organization contends that the Claimant is innocent of any neglect in the performance of his duties based upon his understanding that when he inspects the top of the unit, checks the air and the write-ups it was his job to sign the form but signing as Inspector did not make him responsible, for that is not the way he understood it.

Additionally, the Organization contends that the ten-day suspension assessed against the Claimant was arbitrary because his co-worker received only a five-day suspension when both Employees shared a common work assignment and responsibility and finally, that using his past record as a basis discipline was not proper and that the notice of discipline did not indicate that the quantum of discipline was based on past failures.

The Carrier's response to those contentions is that the Foreman under whose jurisdiction the Claimant was working at the time testified that he assigned both Machinists on the second shift on May 11 to inspect and make necessary repairs to the Unit. According to the testimony of the General Foreman, it has been the practice to determine that the locomotive is free from defect by visual inspection; that the Foreman on duty designates the Inspector and that the Inspector is responsible for the visual inspection. The Foreman on duty testified to that effect.

Here again this Board is asked to review conflicting evidence and determine that the Claimant's version be accepted and that the Carrier's version be rejected. We have held many times in the several awards dealing with the subject of conflicting testimony at investigations that this Board is not constituted to make such determinations. We cannot with validity do so here.

Regarding the Carrier's consideration of the Claimant's past record, the awards of this Board have consistently held that an Employee's past disciplinary record may be properly considered in determining the measure of discipline after a finding that discipline is warranted, based upon the record disclosed in the transcript of the accorded hearing. Such consideration was not unwarranted in this instance. The Claimant was apprised in the notice to report for the investigation that his personal record would be reviewed and that took place at the conclusion of the investigation. Failure to include reference to his past record in the discipline notice is not fatal. It would have been prudent, however, to have done so.

The many awards of this Board have established the principle that it will not reverse or modify the Carrier's disciplinary action, unless the Petitioner is able to produce substantial evidence of probative value that the Carrier has abused its discretion by proceeding in an unfair, arbitrary or capricious manner.

In accord is Second Division Award 3081:

"In order to sustain this claim we must find that the organization has proved that the action taken by the carrier in this case is arbitrary, capricious and an abuse of the discretion vested in management."

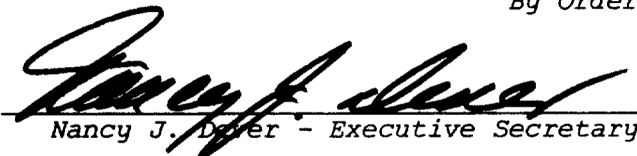
The Organization has not met its burden of irrefutable proof. The claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985