

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 14019
Docket No. 13901
10-2-NRAB-00002-090014

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Employees’:

1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when they charged James Real with failure to admit responsibility when the Car Shop's Terex Loader had a flat tire and negligence in the performance of duty, specifically when the Claimant ran over a rail stop and punctured a tire.
2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman James Real in the amount of five (5) working days that he was suspended from service."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On March 5, 2008, the Carrier notified the Claimant to report for a formal Investigation on March 19, which was postponed and subsequently held on April 4 concerning the following charge:

"When on Monday, March 3, 2008, you were asked by Assistant Manager, Scott Giguere, how a tire on the Car Shop's Terex loader became flat, you failed to admit responsibility, and also withheld your personal, factual knowledge of the actual cause of the destroyed tire. Your behavior was in violation of the following:

Pan Am Railways Safety Rule PGR-E, which states, in part: 'Employees must not withhold information or fail to give all the facts, regarding irregularities accidents, personal injuries or rule violations to those authorized to receive such information.'

Negligence in the Performance of Duties, specifically, your responsibility for puncturing the Terex loader's tire when you ran over a rail stop."

On May 2, 2008, the Claimant was notified that he had been found guilty, as charged, and was assessed a five working days suspension.

It is the position of the Organization that the Carrier erred in suspending the Claimant. It argued that on the day in question the rail stop had a significant amount of snow over it and, therefore, it was impossible to see it. Consequently, running over the rail stop and damaging the tire was an excusable and unavoidable accident. Additionally, it argued that there is no conclusive proof that the Claimant was not forthright about his knowledge of the punctured tire. It concluded by arguing that the Carrier had not met its burden of proof and requested that the discipline should be set aside.

The Carrier argues that there is no validity to the Organization's arguments. It argued that on the date in question, the Claimant was asked by Assistant

Manager Giguere how a tire on the Car Shop's Terex Loader became flat and he not only failed to admit responsibility, but also withheld personal knowledge as to the actual cause of the damaged tire. According to the Carrier, the Claimant violated Safety Rule PGR-E and was negligent in the operation of the Terex Loader. It closed by asserting that the discipline was not too severe and requested that it remain undisturbed.

The Board reviewed the transcript and record evidence. During the Hearing, the Claimant was asked the following:

"P. Slaney: . . . Mr. Real do you willing(ly) admit that you were operating the loader . . .

J. Real: Yes I do.

P. Slaney: When the tire was damaged. Ok and for the record would you state what time this happened?

J. Real: 12:30." (Emphasis added)

With the aforementioned statement the Claimant admitted that he was operating the Terex Loader when the tire was damaged. A close reading of the transcript reveals that he was evasive regarding what he told Supervisor S. Giguere about damaging the tire. He did not tell Supervisor Giguere that he punctured the tire, but instead informed him that the tire was going flat, and because of that, he put the loader in the shop. When Supervisor Giguere was questioned about the incident, he testified as follows:

"P. Slaney: So Mr. Real did report to you that he damaged the tire?

S. Giguere: Reported to me that he had a flat tire on the Terex, yes.

P. Slaney: Did he tell you how it happened?

S. Giguere: No he did not.

P. Slaney: Did you ask him how it happened?

S. Giguere: Yes I did.

P. Slaney: And what did he say?

S. Giguere: He said he didn't know.

P. Slaney: He said he didn't know how it happened? That it just had a flat tire.

S. Giguere: Yeah he said he had, he said he had a flat tire. He noticed it was flat so he moved the Terex into the building."

The testimony quoted above was not seriously challenged or rebutted by the Organization and the Claimant. As previously stated, the Claimant's testimony was evasive as to whether he reported his responsibility to his immediate Supervisor on the date of the incident. In this instance Supervisor Giguere's testimony is more credible than the Claimant's. Moreover, during the formal Investigation the Claimant admitted that he was operating the loader when the tire was punctured.

The record is clear that the Claimant was negligent in the performance of his duties on March 3, 2008 in violation of Safety Rule PGR-E. The Carrier met its burden to prove that the Claimant was guilty as charged.

The only issue remaining is whether the suspension was appropriate. The Board finds and holds that the five day suspension was corrective in nature and was not arbitrary, excessive or capricious. Accordingly, the discipline will not be set aside.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 14th day of January 2010.