

Award No. 3562
Docket No. 3091
2-MILW-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist Ray Schiltz was unjustly discharged from service on May 15, 1957 and that the carrier be ordered to reimburse him for time lost from said date to June 1, 1957.

EMPLOYEES' STATEMENT OF FACTS: Ray Schiltz has been employed as machinist by the carrier for 38 years and is hereinafter referred to as the claimant. At the time of his discharge he was regularly assigned welder, 8:00 A.M. to 4:30 P.M.

At 8:00 A.M. March 26, 1957 the claimant was issued instructions by the roundhouse foreman to put a barrel of oil in the crankcase. While the claimant was engaged in putting the oil in the crankcase the foreman told him to see if cotter keys were in the main bearing bolts, which the claimant did.

After completing his assignment, the engine was started and checked for oil leaks. An electrician employe was in the cab of the locomotive and noted that the oil pressure gauge indicated low oil pressure in the engine. The foreman was informed immediately that the engine had low oil pressure. The foreman, however, elected to continue running the engine. Within 20 minutes of continuous operation after the engine was started, sufficient heat had been built up in the crankcase causing an explosion. Immediately upon examination it was found that the low oil pressure was caused because an oil pipe was left out of the engine which in turn caused excessive heat in the crankcase.

On April 17, 1957 twenty two (22) days after the mishap, the claimant was informed that he was to submit to investigation on April 18, 1957, due to his part in the failure of No. 4 main bearing on DE 978.

On April 18, 1957 the claimant, as well as another machinist and a pipe-fitter, submitted to an investigation.

On May 14, 1957 twenty six (26) days after the investigation, and forty eight (48) days after the mishap, the claimant received formal notice from

the engine because after checking the cotter keys and replacing the inspection covers he told the electrician that the engine was ready to start. It is the position of the carrier that it is right and reasonable to expect any qualified machinist to have observed the disconnected oil pipe when making inspection of the cotter key on the main bearing, in fact, it is the regular duty and responsibility of a machinist when making the final inspection to see that the caps are properly keyed and all appurtenances are connected and in operating condition. Certainly it becomes more right and reasonable when considering the fact that Claimant Schiltz replaced the inspection covers on the crank case and informed the electrician that the engine was ready to start.

The employes have erroneously contended that Machinist Schiltz was dismissed for failure to connect the oil pipe. However, it will be noted he was charged with responsibility in connection with failure of No. 4 main bearing and that his dismissal was based on his responsibility in connection with failure of No. 4 main bearing which was the result of the crank case explosion.

There has been no violation of schedule rules in connection with the carrier's handling of this case. The responsibility of Machinist Schiltz in connection with failure of No. 4 main bearing was properly developed. Board awards have repeatedly held it is not the function of your Honorable Board to substitute its judgment for that of the carrier in matters of discipline. In the opinion of the carrier there can be no question whatever about the responsibility of Machinist Schiltz. Having responsibility in connection with that unnecessary and serious occurrence, in the opinion of the carrier, the dismissal action was entirely justified and we feel that the carrier was more than fair in arranging for his reinstatement on a leniency basis after he had been out of service for no more than 15 days.

We strongly feel there is no justification for the carrier's actions being disturbed and we respectfully request a denial award.

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 were given due notice of hearing thereon.

Machinist R. J. Schiltz was dismissed from service May 15, 1957 because of his alleged responsibility for failure of No. 4 main bearing on Diesel engine 978 at Mitchell, South Dakota on March 25, 1957. He was reinstated on a leniency basis effective June 1, 1957 with service rights unimpaired. He claims time lost from May 15 to June 1, 1957 on the ground that he was unjustly dismissed.

The record discloses that an oil pipe was removed from the engine by the pipefitter. He was subsequently requested by machinist Engravallo to replace it but did not do so, nor did he tell the foreman that the oil pipe had to be connected up. The Claimant's relation to the missing oil pipe is solely based on the carrier's contention that he should have noticed its absence when he checked the cotter keys in the main bearing bolts. It is also contended that he contributed to the resulting damage by replacing the crankcase covers and allegedly inform-

ing the electrician that the engine was ready to start. Schiltz testified at the hearing that he asked the electrician if the engine was ready to start which contradicts the electrician's reported statement. The transcript does not contain the testimony of the electrician or the foreman.

We think the record is insufficient to support the discipline applied to claimant in this case. It is not sufficiently clear that he should have observed the absence of the oil pipe when he checked the cotter keys under all of the circumstances of record. Moreover, there were intervening causes which materially contributed to the resulting damage and cut off what if any connection the claimant's conduct may have had with the ultimate result. On the basis of the entire record we find that claimant was unjustly disciplined and that he is therefore entitled to be paid for all time lost on account of this incident, less any amount earned in other employment.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.