

Award No. 3838

Docket No. 3818

2-NP-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That electrician W. E. Townsley was given an unwarranted five (5) day actual suspension from the services of the Northern Pacific Railway Company, from July 30, 1959 to August 3, 1959 both dates inclusive.

2. That accordingly the Carrier be ordered to reimburse Mr. Townsley the five (5) days wages and remove the disciplinary mark from his record.

EMPLOYEES' STATEMENT OF FACTS: Electrician W. E. Townsley, hereinafter referred to as the claimant, was employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, on July 21, 1958 and was regularly assigned as an electrician from 3:00 P. M. to 11:00 P. M. Thursday through Monday, with Tuesday and Wednesday as rest days, at Livingston, Montana Diesel Shop.

Under date of June 22, 1959, the claimant was notified to report to the office of Master Mechanic C. J. Wirth, Livingston, Montana at 9:30 A. M. Tuesday, June 23, 1959 to ascertain the facts and determine his responsibility for the damage to the main generator of Diesel Electric Locomotive Unit No. 6012-C which took place while this unit was in service between Livingston and Laurel on June 18, 1959.

The claimant was charged with violation of Rules 701 and 712 of the safety rules and admonitions for the general guidance and protection of all employees and the Public and Excerpts from the Operating Rules and General Instructions, in that he did not see that the ground relay knife switch was properly sealed in closed position after electrical work was done on Unit 6012-C prior to offering for service at 12:30 A. M. June 18, 1959.

The investigation was held as per the notice and transcript of said investigation is hereby submitted as the employees' Exhibit A.

"The primary question for decision is whether or not such action of the Carrier was arbitrary, unreasonable or unjust. Being a discipline case, it is elementary that the Division cannot substitute its judgment for that of the Carrier unless it was so tainted with one or more of such three elements of injustice."

Rule 39 of the July 1, 1955 shop crafts agreement reads in part:

" * * * If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and shall be compensated for wage loss, if any, resulting from said suspension or dismissal."

Mr. Townsley was not found blameless. He was derelict in the performance of his duties on June 15, 1959 and consequently was amenable to discipline. The discipline assessed was neither excessive nor capricious. The charges preferred against this employe were amply sustained by the evidence developed at the investigation. The measure of discipline was compatible with Mr. Townsley's dereliction. This Division should not now superimpose its judgment over that of management and remove the discipline assessed against this employe.

The evidence adduced at the investigation on June 23, 1959, conclusively shows that Mr. Townsley failed to fulfill his responsibility as an electrician on June 15, 1959 by improperly performing his duties in violation of Rules 701 and 712 of the safety rules and admonitions and that the carrier's action in administering discipline was neither arbitrary or capricious. The claim covered by this docket should therefore be denied in its entirety.

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.

In the instant disciplinary proceedings the claimant was found guilty of violating safety rules and specifically with failing to see that ground relay knife switch was properly sealed in closed position after performing electrical work on a locomotive.

It is claimed that the action of the Carrier in assessing discipline in these circumstances was arbitrary.

Claimant an electrician working the 3:00 to 11:00 P.M. shift on June 15, 1958 at Livingston, Montana was assigned to repair a locomotive generator. He proceeded to remove the knife switch and to megger test the generator. He then proceeded to remove the brush holders. At the completion of his shift he had not finished the job. Claimant explained his failure to replace the knife switch on the basis that a megger test would have to be made after replacement of the brush holders; and that he left the switch open expecting it to be replaced by subsequent crew members. Subsequent crews failed to replace it following completion of the work. As a result when the unit went out on the

road the generator burned out because of "no protection from ground relay action."

Based on the following factors we hold that the claim must be sustained:

1. At the time in question the accepted procedure was to leave the knife switch open until final completion and testing, and flagging the equipment was not standard procedure.

2. There was a time lapse of two days after claimant performed his work and during this time others worked on the equipment.

3. It seems clear that the crew member or members who completed the job were negligent in not inspecting and replacing the knife switch.

4. Finally, the discipline against claimant could be upheld only on the basis that he was under a duty to anticipate that others working on this locomotive would negligently fail to seal the ground relay switch. The extensive work remaining to be performed rendered such a possibility so remote as to be legally unforeseeable.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1961.