

Award No. 4020

Docket No. 3980

2-SOU-SM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Sheet Metal Worker G. S. Prickett was unjustly removed from service on May 27, 1960 and discharged from the Carrier's service on May 28, 1960.

2. That accordingly the Carrier be ordered to compensate Sheet Metal Worker G. S. Prickett for all time lost from May 26, 1960 to July 25, 1960, date of his restoration.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker G. S. Prickett, hereinafter referred to as the claimant, was hired by the Southern Railway Company, hereinafter referred to as the carrier, in year of 1941, at its Spencer, North Carolina shop as a laborer and after working four months as laborer was transferred to sheet metal worker helper, then served an apprenticeship, which he completed April 15, 1946, and was employed by the carrier as sheet metal worker on April 16, 1946. He was removed from service on May 27, 1960, and was discharged on May 28, 1960.

Claimant performed his assigned duties of applying hose connection to #10 Aeroquip hose, then applied hose to intake of oil pump to governor of diesel locomotive 6228 on May 13, 1960.

The above mentioned locomotive was dispatched from Spencer shop on May 13, 1960, after claimant had performed his assignment. Claimant was given a preliminary investigation by the shop superintendent on May 25, 1960, and informed that he was charged with failure to use proper tool in applying hose connection, resulting in an engine failure to locomotive 6228 on night of May 24, 1960. On May 27, 1960, an investigation was held by the Superintendent Spencer Shop, claimant was suspended. In a letter addressed to the claimant dated May 28, 1960, Superintendent Spencer Shop, advised the

Third Division Award No. 5969, Referee Douglas:

"This Board should not attempt to weigh the evidence of the investigation. As has been held before, we should not interfere with disciplinary matters in the absence of a showing that the Carrier's action was arbitrary, capricious, or without basis. In other words, when there is substantial evidence, if believed, to uphold the decision of the Carrier, we should not substitute our judgment for that of the hearing officer."

Third Division Award 6232, Referee Smith:

"It is well established by awards of this Division that a disciplinary action of a Carrier will not be disturbed if substantial evidence of probative value is adduced and (1) the investigation rules have been followed, (2) the action of the Carrier is neither arbitrary nor capricious, and (3) the penalty invoked is neither excessive nor unreasonable."

Fourth Division Award 835, Referee Roscoe P. Conklin:

"A principle well established in this Division is that this Board will not disturb or interfere with a disciplinary action taken by a Carrier unless the record reflects definitely and clearly that such disciplinary action was unjust, lacking in good faith, unreasonable and excessive."

The Board, being committed to the principle that it will not substitute its judgment for that of the carrier in disciplinary matters, has no right to substitute its judgment for that of the carrier in the instant case, because the evidence of record clearly reveals that Mr. Prickett was dismissed for just and sufficient cause and that carrier's action was not arbitrary, capricious, in bad faith or based on bias or prejudice or abuse of discretion. To the contrary, it was brought about by Mr. Prickett being derelict and remiss in performing his duties and assuming his responsibilities as pipefitter.

CONCLUSION

Carrier has shown that:

(a) Claimant was not unjustly suspended and dismissed. He was suspended and dismissed for failure to properly perform work assigned to him which he was paid to do in a satisfactory manner.

(b) Prior Board awards fully support carrier's action and its position.

Mr. Prickett, having been dismissed for just and sufficient cause, does not have a contract right to be paid the compensation here demanded on his behalf. The Board cannot substitute its judgment for that of carrier. In these circumstances, the Board has no alternative but to make 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.

Claimant was suspended on May 27, 1960 and discharged from service the next day, after an admittedly fair hearing. He was readmitted to service on a leniency basis with all rights restored on July 25, 1960, but without pay for time lost. The claim is for that pay.

The charge was that he violated his instructions in that he had failed to use the proper tool for applying the fittings to the ends of an Aeroquip hose through which lubricating oil was supplied to the governor pump of a diesel locomotive, resulting some eleven days later in the burning up of the pump, a train delay of seven hours and considerable expense.

The charge was admitted, but the discipline imposed is questioned on two grounds. The first is that although such hose ordinarily operates for long periods of time the damage to the ends of the hose at the fittings might have resulted from a defective hose or from the overheating of the oil from some other cause, and that the damage to the pump might have resulted from other causes. But the record contains credible opinion evidence that the damage to the pump was the proximate result of Claimant's failure to use the proper tool according to instructions.

The other ground is that leniency should have been shown because the tool was not readily available and that under such circumstances it was the practice to use any means at hand to apply the fittings to the hose. The record indicates that these hose units are usually prepared in advance and kept in supply, and if not available are borrowed from another diesel engine; that the employe who usually does this work kept the special tool in his locker and was not working that day; that there was no prepared hose unit on hand or available from another diesel engine; that the special tool was not available, and that the Claimant was therefore justified in using other means to prepare the hose unit.

But the Claimant did prepare the part without the proper tool and installed it on the engine without contacting either his supervisor or the employe who was working in the place of the employe regularly using the special tool, and did not report to the supervisor that he had done so; when the matter was later brought to the supervisor's attention, he investigated the matter, found that the tool was in the locker of the employe regularly using it, and that the employe doing his work that day had a key to the locker. It is thus clear that the special tool would have been readily available if Claimant had asked either the supervisor or the other employe for the tool so as to perform the work properly. Failing to do so he could have prevented the damage by informing his supervisor of the facts so that the defective hose could have been replaced long before the damage resulted.

In view of the damage, the seven hour train delay and the resulting expense, Claimant's discharge and subsequent restoration to service in about

two months was not such excessive discipline as to indicate arbitrary action or abuse of discretion; in fact, the record indicates that the Carrier exercised leniency under the circumstances.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.