

**Award No. 4094**  
**Docket No. 4027**  
**2-SOU-EW-'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.

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**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

(a) That under the current agreement Electrician G. R. Couch was unjustly suspended from service, pending an investigation which was held June 1, 1960.

(b) That the Carrier unjustly dismissed Electrician G. R. Couch from service effective June 17, 1960.

(c) That accordingly the Carrier be ordered to compensate Electrician G. R. Couch for all time lost during the period of May 23 through June 29, 1960.

**EMPLOYES' STATEMENT OF FACTS:** Electrician G. R. Couch, hereinafter referred to as the claimant was employed by the Southern Railway Company, hereinafter referred to as the carrier, at its Pegram Shop in Atlanta, Georgia, since April 4, 1955.

Under date of May 23, 1960, General Foreman C. O. Garvin, had Electrician G. R. Couch brought to the office charged Electrician G. R. Couch with failure to make proper observation and inspection of unit 6910, before being dispatched from Pegram Shop on May 23, 1960.

Under date of June 1, 1960, 10:00 A. M. Electrician G. R. Couch was given an investigation by Master Mechanic L. S. Presson, Jr., Pegram Shop, Atlanta, Georgia.

Under date of June 6, 1960, Master Mechanic L. S. Presson, Jr., directed a letter to the Local Chairman Mr. J. A. Bennett, with copy of the investigation of the claimant, asking that Mr. Stanford and Mr. H. S. Johnson read the transcript of the investigation and give him a reply from each of them on

what we might or might not have done had the matter come to us initially."

Award No. 1275, Referee Sembower:

"... we cannot interfere where no material error appears in the transcript of the proceedings and there is such basis for the discipline that it cannot be said to have been arbitrary, unreasonable, or in bad faith. . . ."

Attention is directed to the following additional awards of the Fourth Division:

257	671	901	1124
264	677	912	1152
337	755	978	1201
375	796	1008	1218
401	804	1048	1241
574	844	1081	1268
622	899	1102	1270

The Board, guided by the principles of its prior awards, hereinabove quoted or cited, has no alternative but to deny the claim and demand here presented by the Brotherhood.

### CONCLUSION

Carrier has shown that:

(a) The charge against Electrician Couch was proven by the evidence of record and he was dismissed for just and sufficient cause.

(b) The discipline administered was not imposed as a result of arbitrary or capricious judgment or in bad faith. To the contrary, it was applied in good faith. Carrier's action is fully supported by the principles of awards of all four Divisions of the Board.

(c) Electrician Couch, having been dismissed for just and sufficient cause and having been reemployed on a leniency basis after the disciplinary action had served its purpose, does not have any contract right to be paid the compensation here demanded. The Board cannot do other than follow its prior decisions and 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.

The record shows that the defective amp meter which claimant was disciplined for failure to report was not inspected by him, but by another employe with whom he was working the inspection.

Under the circumstances the report item for the "General Inspection of All Elec. Equipment" apparently should have been signed by his co-employe instead of, or in addition to, claimant. But his failure to do so did not make claimant guilty of "failure to properly perform (his) duties in connection with the improper functioning of amp meters on unit 6910 on May 23, 1960," and the preliminary investigation should have disclosed who actually inspected it.

### 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 November 1962.

### DISSENT OF CARRIER MEMBERS TO AWARD 4094

On May 23, 1960, the Claimant, Electrician G. R. Couch, was assigned to the work of making a general inspection of all electrical equipment on diesel-electric locomotive unit 6910 then in the shop for maintenance repairs and inspection.

Shortly after this locomotive was outshopped, the main generator was severely damaged due to malfunctioning of the electrical system, which malfunctioning could not be recognized because of defective amp meters.

The Claimant **was assigned** to the work of making a general electrical inspection of **all** electrical equipment on this locomotive. In the investigation by the Carrier to determine the cause of the failure of diesel unit 6910, the officers and supervisors in the Electrical Department established that the defective amp meters helped to bring about the trouble, for had the amp meters been performing properly, the diesel crew could have taken the unit out of service prior to the destruction of a very expensive generator.

The Claimant was subsequently charged with failure to properly perform his duties in accordance with his assignment of making a general inspection of the electrical system of diesel 6910. In the record we read:

- (1) Claimant **was assigned** to do this work.
- (2) Claimant **signed** the work sheet for the work.
- (3) Claimant **knew** the amp meters were defective.
- (4) Claimant **did not report** the defective amp meters.

The Carrier has a contractual right to expect the employes to properly perform their work assignments, and when an employe withholds information

concerning defects in equipment found during his work assignment and then compounds the wrong when he signs for the work not performed, thereby allowing the diesel to return to service subject to a failure while in service, then he is rightfully subjected to discipline. The small amount of time lost is little enough in comparison to the cost to the Carrier of a main generator.

This Division erred in exonerating the Claimant after he admitted he knew the condition of the amp meters and kept this information from his supervisor and allowed the diesel to return to service.

For the reasons herein stated, we dissent.

**P. R. Humphreys**

**F. P. Butler**

**H. K. Hagerman**

**W. B. Jones**

**C. H. Manoogian**

#### **REFEREE'S REPLY TO DISSENT TO AWARD NO. 4094**

In fairness to claimant it seems proper to note that he did not check the meters and did not know, either personally or through hearsay, that they were defective, although he and other witnesses testified that such meters pretty generally were so and were habitually left that way or blanked for want of replacements. It is clear that "notching 'em up" was a two-man job, that Mr. Hayes was the one who actually inspected these meters, and that he gave no indication to claimant that they were defective, but indicated that everything was all right.

On questioning by Master Mechanic Presson, who conducted the hearing, Mr. Hayes testified as follows:

Q. "Mr. Hayes, did you make any report to Mr. Couch that — of what you found on the No. 2 engine of the 6910?"

A. "I did not. My primary purpose on the engine was to see that all of 'em was in the 6th notch, notching up properly. It was time for the engine to go, and had it needed a new meter, if there have been any in this shop in the last few days \* \* \* I have not seen them."

Claimant testified:

"One man can't go through there and notch one of those engines up."

"Mr. Hayes told you he come through there and checked 'em and give me the high sign that they was all right, that everything was all right."

Mr. Presson appeared to understand, for he said to claimant:

"Mr. Couch, since Mr. Hayes made this check, I'm at a loss to know why you signed for the inspection of this locomotive."

Claimant repeated in effect what must have been common knowledge to Carrier's officers, including the master mechanic, that it was a two-man job, in which each man had to rely on the other. Obviously neither employe could possibly certify all the other's acts and observations except on hearsay, and a certification by one must necessarily be accepted on that basis.

Claimant did not know that these amp meters were defective, and his certification included matters which necessarily required acts and observations by his co-employe. Consequently he was not guilty of "failure to properly perform his duties in connection with the improper functioning of amp meters."

**Howard A. Johnson,**  
Referee.