

Award No. 4159
Docket No. 4047
2-CNO&TP-MA-'63

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. (Machinists)

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier capriciously, arbitrarily and in violation of the controlling agreements, on September 12, 1960, suspended Machinist A. F. Valley from service and on September 16, 1960 conducted a formal investigation following which investigation Machinist Valley was dismissed from the Carrier's service, again, without just cause and in violation of the agreement.

2. That accordingly, the Carrier be ordered to properly apply the applicable rules of the agreements and compensate Machinist A. F. Valley for all time lost from September 12, 1960 until September 24, 1960, upon which date he was reinstated to the Carrier's service with unimpaired rights. Actual time lost being eight days, six hours and twenty minutes.

EMPLOYEES' STATEMENT OF FACTS: A. F. Valley, hereinafter referred to as the claimant, is employed by the Southern Railway System, hereinafter referred to as the carrier, as a machinist at the Chattanooga Diesel Shop, Chattanooga, Tennessee, with a seniority date of September 14, 1959. The claimant was first employed as a machinist at Spencer, North Carolina, by the carrier December 28, 1948 upon the completion of a four year apprenticeship and has been continuously employed except for three years spent in military service.

On September 6, 1960, the claimant worked as machinist inspector, beginning the shift at 11:00 P. M. on the 6th and ending the shift at 7:00 A. M. on September 7th. Between the hours of 6:00 A. M. and 7:00 A. M., September 7th, the claimant made the usual and customary inspection required of diesel-electric unit No. 4349. As is the practice, the claimant worked around

(c) Machinist Valley, having been disciplined for just and sufficient cause after conceding his guilt, does not have any contract right to the compensation here demanded on his behalf by the association. Clearly a denial award should be made.

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.

On September 12th the diesel shop manager suspended claimant from duty and notified him of a hearing on September 16th, for his failure to list on Form 1059 a defective No. 1 suspension bearing as supposedly required by I.C.C. Rule 203; the hearing was held on September 16th by the manager, who on September 17th discharged claimant from the service but reemployed him on September 24th.

This claim is that his suspension and discharge were capricious, arbitrary and in violation of the Agreement and that claimant should be compensated for the actual time lost, amounting to eight days, six hours and twenty minutes.

The record shows that at about ten o'clock on the evening of September 6, 1960, two general foremen at the Diesel Shop at Chattanooga noticed that the left No. 1 wheel motor suspension bearing cap was missing, and that waste was hanging from the bearing, which apparently had been running hot; they reported this to the diesel shop manager, who ordered the locomotive held out of service and the No. 1 wheel motor removed; that at 6:00 the next morning claimant was inspecting the locomotive; that according to his regular routine he went around the engine to gauge all four wheels, and then made a quick inspection from the pit preparatory to making detailed inspections of the wheel units; that in so doing he found, and noted in his book, that the No. 1 motor dust guard was missing; he immediately reported it to the foreman and the latter told him that the No. 1 motor had been written up on the work sheet to be taken out of the locomotive because of a hot suspension bearing; claimant therefore paid no further attention to the No. 1 motor assembly and did not find nor report the bearing defect in the Form 1059 Locomotive Inspection Report, although he did copy therein from his book seven locomotive defects noted by him, including the missing No. 1 motor dust guard.

This was not an I.C.C. Rule 203 inspection. That rule provides that "each locomotive and tender shall be inspected after each trip or day's work," obviously to assure proper condition for further service. But the diesel shop manager had already ordered the removal of the No. 1 wheel motor assembly; the Rule 203 inspection must have been made before that, and the locomotive approved for service; for according to Carrier's Ex Parte Submission the suspension bearing defect was discovered by the two general foremen

"upon routine examination" of the locomotive, which was "about to be dispatched from the Diesel Shop * * * for use out of Chattanooga * * *" on a particular run.

This record suggests that there may have been a violation of Rule 203 inspection requirements before the locomotive was ordered out on the Knoxville run, but we find no indication that claimant was responsible for it.

The question remains whether he violated his duty by not noting the bearing defect on his Form 1059 report, which listed the seven defects noted by him. Six of them, relating to other items, were found not to require immediate repairs, according to notations on the form, of which at least one was made personally by the diesel shop manager. No notation appears opposite the seventh item, which reported the missing No. 1 wheel dust guard, presumably because the purpose of Form 1059 was the preparation for service of locomotive 4349, from which the No. 1 wheel motor assembly was to be removed and no longer concerned it. Presumably a notation concerning the No. 1 suspension bearing would likewise have been ignored in this report, for the same reason.

It is unquestioned that claimant listed on this inspection report all defects found by him. Being asked, during his detailed cross-examination by the diesel shop manager, whether he found this No. 1 suspension bearing defect, claimant said:

"* * * Mr. Arp (the foreman) told me that No. 1 motor was coming out for hot suspension bearing and that is the only knowledge I had of it,—what he told me,—and he said it was coming out, it was written up on the work sheet, so at the time I saw no reason for me to report it." (Parentheses ours.)

He stated also that he saw this work sheet and because of that and the foreman's statement he did not make a detailed inspection of the No. 1 wheel assembly nor put in his report the defect of which he had hearsay knowledge. Since he was inspecting locomotive 4349 for service, he was clearly justified in not making a detailed inspection of a part which according to his foreman and the work sheet was to be removed from it before further service. And since Form 1059 was supposed to show the results of his own examination, he would have been at fault in entering the hearsay information without first verifying it by his own observation. It seems clear, therefore, that his failure of duty in that respect, if any, was his failure to make a detailed study of the No. 1 wheel motor assembly, which was not necessary for purposes of Form 1059, and with which he was not charged.

Since these facts were all within the knowledge of the diesel shop foreman or readily available to him, claimant's suspension and discharge were not proper.

Claimant's representation by Local Chairman Krause and Committeemen Reid and Watson was so factual, terse, efficient, and limited to only essential matters, as to merit special mention.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.