

Award No. 4746

Docket No. 4649

2-PRR-MA-'65

**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. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)
THE PENNSYLVANIA RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier unjustly disciplined Machinist J. F. Swander, by suspending him for three (3) days, January 23, 24 and 25, 1963.
2. That the Carrier be ordered to remove the three (3) days' discipline from J. F. Swander's record and compensate him eight (8) hours at Grade "E" rate of pay for January 23, 24 and 25, 1963.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. F. Swander, hereinafter referred to as the claimant is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, in the Juniata locomotive shops, heavy repair shops, which is a part of the Altoona Works.

On November 8, 1962, Machinist J. F. Swander was served a notice of trial by Foreman A. L. Morse, being charged with "oil not being applied to left #2 roller bearing journal box of #2 truck locomotive 5770-A", to be held Thursday, November 15, 1962, at 1:30 P.M., in the E&M—M&M Shop Office.

On November 28, 1962, Claimant J. F. Swander was served a notice of discipline whereby he was disciplined three (3) days' suspension, notifying him that the suspension would be served 10 days from the above date.

On November 28, 1962 Claimant Swander wrote Mr. W. L. Goetz, superintendent of personnel, advising him that he wished to appeal the decision of Mr. A. L. Morse, foreman.

On December 7, 1962, Mr. W. L. Goetz, superintendent of personnel wrote Swander and notified him that his appeal would be heard at 3:40 P.M. December 11, 1962, in the personnel office, 2nd Street, Juniata, Altoona, Pa.

On January 2, 1963, Mr. W. L. Goetz, superintendent of personnel wrote Mr. J. F. Swander and stated that — "I have personally reviewed this matter with Superintendent W. H. Yarber and Foreman A. L. Morse, and it has been decided

In view of the fact that the employees have failed to show that the claimant's rights were prejudiced because the foreman made the charge and conducted the trial, their objection in this connection should be disregarded.

In summary, the carrier desires to emphasize that the employees' position in the joint submission must be characterized as nothing more than a series of irrelevant and immaterial comments, none of which lend any support to the proposition that the discipline should be set aside. On the other hand, the carrier has shown that in view of the clear evidence in the trial record, the claimant was obviously guilty of the offense for which he was charged and disciplined. The employees have not, and cannot, produce evidence to the contrary.

In view of all of the foregoing, the carrier respectfully requests your honorable board to deny the claim of the employees in this matter.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

The record shows that it is the duty of the wheel shop machinists to assemble the axles, wheels and boxes with covers, and for the truck section machinists then to mount the trucks on the wheel assemblies and apply lubricating oil to the boxes.

In this instance the wheel assembly came to the truck section without one of the box covers which are needed to confine the oil; Claimant therefore did not apply the oil to that box. The next day the cover was installed on the box by a wheel shop machinist, and although the truck remained in the truck section of the shop until the second day following, Claimant did not apply oil to the box.

After Claimant's work had been completed except for the application of oil, the truck was removed from the jig and placed at another point, still in the truck section of the shop. The Employees state that this was not where the machinists regularly perform their work, but the Carrier states that "It was at this location that the truck repair machinists finished up their work." There is no claim or indication that after its removal from the jig the truck was placed beyond Claimant's reach. On the contrary, when asked why he did not check later to see whether the cover plate had been applied so that the oil could be inserted, Claimant did not say that it was not accessible, but only "I think when the cover plate was applied to the box, I should have been informed."

Claimant admits that it was his job as machinist truck repairman to apply the oil, but the complaint is made on his behalf that he is singled out unjustly because: (1) another machinist truck repairman was working with him and was equally responsible; (2) Claimant should have been told when the cover was installed; and (3) the lack of oil in the box should have been discovered by others so as to prevent damage. But (1) Claimant and the other repairmen were working separately on separate wheel assemblies, each being responsible for his own; (2)

the shortage of one cover on this wheel assembly, and the consequent lack of lubrication, should have alerted Claimant to the necessity for a further check, since it was his admitted duty to apply the oil; and (3) the unfortunate fact that others did not discover Claimant's failure in his primary duty cannot excuse him.

The nature of the discipline administered indicates that all of the circumstances were taken into consideration; certainly it was not so severe as to appear excessive, unjust, arbitrary or unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.

LABOR MEMBER'S DISSENT TO AWARD 4746

The majority has erred in their findings in Award 4746, particularly having ignored or overlooked certain data and facts reflected in this record which, we believe, establishes managerial obligation and responsibility .

As pleaded by the claimant in the investigation relating to this instant case:

"I thought when the cover plate was applied I should have been informed."

this was a reasonable opinion on the part of the claimant, particularly in view of the fact that the missing cover was not an ordinary cover, nor was it an ordinary occurrence to have such covers missing.

Note Employees Exhibit H, Joint Statement of Facts, Page 4:

"* * * The special cover plate on this journal box is the only one of its kind on the locomotive because it houses the speed control equipment**** and further, on the same page, in pertinent part:

"The missing cover plate was located and applied during the second trick by another employee who performed no other work on this truck****".

****He applied the cover plate because under ordinary conditions these cover plates are applied by the Machinists in the wheel section when the boxes are repaired.****"

****All five other cover plates on this truck had been applied in the wheel section when the boxes were repaired****"

The foregoing are quotations from the company's statement, not the employee's. Further, in Exhibit H, Joint Statement of Facts, Page 1:

"On October 23, 1962, Mr. Kenneth Mayes, Machinist from the Wheel Gang, was instructed by Supervision to put the cover plate on the #2 box of the #2 truck after the cover plate had arrived in the shop".

It is reasonable for a foreman to know the nature of work over which he has jurisdiction or supervision. Therefore, he knew that when the cover was applied the next step to follow would be to insert the oil. He also knew that the man on the second shift put the cover on because he instructed him to do so. He knew that the truck gang man on the day shift was unaware of these events or instructions. Therefore, this record reflects a lack of communication on the part of supervision to the employees who are subject to their orders and administrative decisions.

The majority states, in part:

"Claimant admits that it was his job as machinist truck repairman to apply the oil,***"
This is a mere statement of fact, not an admission of guilt or failure to perform in accordance with his normal duties.

The majority further states:

"*** (2) the shortage of one cover on this wheel assembly, and the consequent lack of lubrication, should have alerted Claimant to the necessity for a further check since it was his admitted duty to apply the oil; and (3) the unfortunate fact that others did not discover Claimant's failure in his primary duty cannot excuse him."

The record does not reflect, nor is it claimed by the carrier or the employees, that the primary duty of the claimant was that of filling journal boxes with lubrication. On the contrary, the record reflects that filling boxes with lubrication is just one duty incidental to the complete repair of these diesel trucks.

Note, Joint Statement of Facts, Exhibit H, Page 1 in pertinent part:

"***Machinist J. F. Swander and Machinist M. E. Reffner were assigned to repair and apply the boxes to two BP20 trucks. In the repairing of trucks there were eight boxes applied to the diesel trucks***"

Based on the record and the pertinent points projected in the foregoing, it is clear that the carrier erred in their discipline of this claimant and it is just as clear that the majority erred in their judgment of the record as a whole and, therefore, we must dissent.

**R E. Stenzinger
C. E. Bagwell
E. J. McDermott
T. E. Losey
James B. Zink**