

Award No. 5213

Docket No. 5046

2-RDG-EW-'67

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. 109, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Reading Company effective August 15, 1964, suspended and dismissed from the service without just cause, Electrician John W. Bailey, Jr.

2. That the Reading Company be ordered to

(a) Restore this employe to all seniority rights unimpaired because of this unjust action.

(b) Compensate this employe for all wages and benefits lost account of this dismissal, retroactive to August 15, 1964, to date he is restored to duty.

EMPLOYEES' STATEMENT OF FACTS: The Reading Company, hereinafter referred to as the Carrier, employs a group of electrical workers in the Philadelphia District which covers eight (8) different points, with all employes on one common roster. Electrician John W. Bailey, Jr., hereinafter referred to as the Claimant, is bottom man on that roster with a seniority date of 4-4-63. On August 14, 1964, while working as a vacation relief man he was assigned at 11:00 P. M. to work along with electrician Wayne Whitehouse on inspection of Locomotive RS-663, at Saucon Creek Engine House.

The claimant worked on the traction motor and batteries, while Whitehouse worked on the load regulator. Later on Whitehouse called for the claimant to assist him with some final tests while running the locomotive engine, and the claimant was sent to the locomotive cab to watch the action of the meters while load built up. On one of these tests the locomotive for some unknown reason took off and in seconds it lay on its side in the turntable pit. Before turning over in the pit, the Claimant jumped from the Locomotive and was later sent to the hospital along with Whitehouse for treatment. Upon their return from the hospital, Mr. J. J. Butler, Supt. Locomotive

trician Whitehouse's thoughts while observing the load regulator on the running board. Nevertheless, Whitehouse raced around the front of the engine and back into the cab in order to stop the movement of RS-663. In comparison with Whitehouse's concerted endeavor to avert danger, the Claimant offers only repeated confusion prompting him to abandon the engine. If Whitehouse had time to race to the cab and grasp the throttle, the Claimant clearly enjoyed sufficient time to stop the movement of RS-663: (Tr. 13)

"Q. What did you (Whitehouse) do at the time the locomotive started to move?

A. Right away I raced to the cab. I didn't know what to think, I thought the throttle had been open and by the time I got there it had entered the pit already and made an effort to shut the throttle off. This all happened in seconds.

Q. Mr. Whitehouse, were you successful in closing the throttle off?

A. I had my hand on the throttle, that is, when it lunged down."

In view of the Claimant's failure to ascertain and secure the position of the control equipment and his negligent response to the result of this dereliction, Carrier submits that the claim of the organization should 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.

The claim is that the Carrier suspended and dismissed the Claimant from its service without just cause, in violation of the Agreement.

Electricians Whitehouse and Bailey (the Claimant) were making a quarterly inspection of Locomotive RS-663, and had arrived at the point of final tests with the diesel engine running. While the Claimant was working outside, Whitehouse entered the cab to test the load regulator commutator. After making sure that the independent brake was applied and that the various controls were operating, Whitehouse set the controls for load movement and commenced to load the engine in No. 1 throttle position. The arcing of the brushes assured both employes that the load regulator was loading, and at the completion of his test Whitehouse concluded that the unit loaded normally, but somewhat slowly. He noted also that the independent brake was fully applied, that the locomotive did not attempt to move, and that there was no surging. They then switched positions, Whitehouse leaving the cab to observe the load regulator, and Bailey entering it to make the tests. He did not check the brake system gauges, but relied upon the position of the brake handle as indicating that the brake was on. He did not note the position of the road

switching switch, the isolation switch, the generator field switch, the ground relay or the throttle control, but assumed that everything was properly arranged. Asked whether the locomotive was moving when he was watching the load regular brush arm, Claimant said: "Personally, I did not take notice; it could have, and yet I could not swear to it." He proceeded to open the throttle to the No. 1 position, according to his testimony. However, the controls were not sufficient to hold the locomotive, as they had when Whitehouse put the throttle in No. 1 position. The locomotive surged with such force that Claimant was thrown off balance, indicating that the throttle must have been opened farther than he intended. Thrown off balance, Claimant reached out and moved either the reverse handle or the throttle; apparently the latter, since the assistant foreman estimated that the speed of the engine was "close to No. 6 throttle speed, or more." Claimant testified that he thought of applying the emergency brake, but did not know which way to turn it, and therefore jumped from the engine. Whitehouse, who was on the running board, dashed into the cab and attempted to close the throttle, but before he could do so the locomotive had toppled sideways into the roundhouse pit, resulting in about \$85,000.00 damage.

According to the medical reports, Claimant had a bruised left eye and left leg, while Whitehouse, who was in the cab when the locomotive went over, had a bruised right rib cage, lump on front and rear of head, and cuts and bruises on hands and arms.

The notice of hearing directed the Claimant to present himself "for hearing and investigation * * * to determine your responsibility, if any," in connection with "locomotive RS-663 running into turntable pit, resulting in extended damage to RS-663, turntable and accessories * * *."

Objection is made that the charge was not precise, but it was in the usual form and clearly stated that the question to be investigated was Claimant's responsibility, if any, for the wreck of the engine. In other words the charge was his responsibility for the accident, and he had full opportunity to prepare for it. The ground for the contention that no specific charge was made is that "no reason has been given by the Carrier as to just what the Claimant did, or did not do to cause this damage * * *." But this was not a criminal charge, and the purpose of the investigation was to ascertain what he did or did not do in order to determine his responsibility, if any for the accident. Furthermore, at the close of the hearing the Claimant and his representative both stated that the investigation had been held in a fair and impartial manner and in accordance with the Agreement.

Complaint is made that there was considerable delay in the preparation of the stenographic report of the investigation, that they were not allowed to participate in examination of the stenographer's notes, and that the record was not accurate or complete. Every possible step should have been taken to avoid any complaint of this kind. But the alleged errors and omissions are not stated, and there is no contention that they, or the delay in the preparation of the transcript, in any way prejudiced Claimant's interests, or made the investigation unfair.

Upon review of the record the Board finds that the record warranted the conclusion that Claimant was responsible for the accident, that the circumstances and the serious result gave substantial ground for Claimant's suspension and dismissal, but that in view of the Claimant's prior record of seven

years service without disciplinary action he should now be returned to the service with seniority and vacation rights unimpaired but without pay for time lost, or the other benefits claimed.

AWARD

Claim 1 denied.

Claim 2 sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1967.