



Award No. 5672
Docket No. 5485
2-MONON-MA-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

MONON RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the current agreement, Machinists L. E. Hart and B. E. Moore, Sr., hereinafter called the Claimants, were unjustly dismissed by the Monon Railroad Company, hereinafter called the Carrier, on September 16, 1966.

(b) That accordingly, the Carrier be ordered to reinstate the Claimants with their former seniority and all other rights unimpaired and with pay for all time lost, plus 6% interest, and for vacation, Travelers Insurance coverage and all other so-called fringe benefits that have been or may be lost during the time they are held out of service.

EMPLOYEES' STATEMENT OF FACTS: The Claimants were regularly employed as machinists at the Carrier's main shops at Lafayette, Indiana. L. E. Hart was employed on August 24, 1959 and B. E. Moore, Sr. was employed on June 27, 1948.

On September 6, 1966, the Claimants received notices to attend an investigation at 1:00 P. M. on September 7, 1966, to "... determine the cause and place your responsibility for the failure of Locomotive 408 on Train No. 71 on August 26, 1966." Two other machinists, C. E. McCarthy and J. W. Myer, also received the same notice.

Investigation was held on September 7, 1966 and the Claimants were subsequently dismissed on September 16, 1966.

This dispute has been handled with all officers of the carrier designated to handle disputes, including the highest designated Officer of the Carrier, all of whom have failed to make satisfactory adjustments.

The Agreement effective December 1, 1954, as amended, is controlling.

In the present case, both Claimants had a clear record, both had several years of service, and, in Carrier's estimation, the seriousness of the offense justified a term of discharge of approximately one year. Based upon these facts, Carrier has offered reinstatement of both Claimants with all rights and privileges restored, effective September 1, 1967, which is approximately one year from date of discharge, with the question of discipline and any claim for pay to be decided by this Board.

As of this time it is not known whether this offer will be accepted by the Organization, or whether if accepted, Claimants will actually return to service of this Carrier.

With respect to Employees' claim for pay for time lost with interest at 6 percent, Carrier maintains the discipline assessed was just and reasonable, and no claim for time lost can be justified; however, in the event Carrier should be overruled on any portion of this period, Carrier maintains any outside earnings by Claimants would have to be taken into consideration. Furthermore, any question of interest is not provided by the rules, and cannot be given consideration.

In summary, Carrier submits:

1. The investigation was proper and fair and held to the satisfaction of the Employees, and any objections thereto cannot now be considered.
2. The investigation proves beyond a reasonable doubt that Claimants were careless and did not properly perform their duties, thereby being responsible for serious damage to the locomotive and heavy expense to the Carrier.
3. The discipline assessed was just and reasonable, and not an abuse of discretion by the Carrier.
4. That in the event this Board should give any consideration to pay for any portion of the time lost, proper consideration must be given to outside earnings.
5. That any claim for interest is not provided by existing rules and cannot be considered.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

This is a discipline case arising out of the dismissal of claimants by Carrier following an investigation to " * * * determine the cause and place your responsibility for the failure of locomotive 408 on train No. 71 on August 26, 1966." Two other employes received similar notices, but were relieved of responsibility by the Carrier after the investigation. In the first instance, Petitioner urges that claimants were denied a fair and impartial hearing. Furthermore, Petitioner contends that Carrier has failed to establish that the alleged negligence on the part of claimants was directly responsible for the subsequent explosion in the crankcase of Diesel locomotive 408, which occurred after it had been load tested for a period of eight (8) hours.

Carrier avers that claimants received a fair and impartial trial, as evidenced by their agreement that the investigation had been conducted in accordance with the rules of the applicable Agreement at the conclusion of the hearing, and that the major offense charged had been established through probative evidence introduced during the investigation.

Examination of the hearing record fails to disclose that claimants were prejudiced in any manner, and that none of their procedural or substantive rights were abrogated. Moreover, both agreed at the conclusion of the hearing that the investigation had been conducted in a fair and impartial manner in accordance with schedule rules. Hence, we find no merit in the contention that the investigation was not fair and impartial.

As to the substantive issues involved in this dispute, the record reveals that claimants were responsible for installing certain filters on the locomotive engine without cleaning them prior to installation, as claimants thought such filters already had been cleaned by other machinists in accordance with established shop practice. Following the explosion in the crankcase of Diesel unit 408, an examination revealed that a connecting rod was broken which damaged the crankcase beyond repair, as well as other parts of the motor. An employe of Alco Products disassembled a strainer and found a piece of a paper towel obstructing the oil flow. A filter element apparently installed by claimants also was found to contain some paper, and Carrier determined that such obstructions were directly responsible for the subsequent explosion. Despite this determination by Carrier, it is undisputed that the locomotive engine was in operation for approximately eight (8) hours without mishap prior to the date on which the accident occurred, which would indicate that oil was flowing sufficiently to lubricate and cool the rod bearing. Regardless of the expressed opinion of an Alco representative that oil may have been running at an increased RPM, there is no clear and convincing evidence that claimants' failure to clean specific filters which were installed on said locomotive engine was directly related to the engine explosion, which actually occurred after at least eight (8) hours of continuous operation.

Carrier's basic charge against claimants is that their alleged gross negligence was directly responsible for considerable damage to the locomotive. Petitioner has offered evidence which specifically refutes the evidentiary significance of Carrier's conclusions as to responsibility. Even though claimants should have ascertained whether the filters installed by them had actually been cleaned prior to installation, we are still confronted with conflicting evidence concerning the validity of a basic premise advanced by Carrier

in support of the disputed disciplinary action against claimants. After thorough examination of the entire record in this case, we find the evidence not sufficiently convincing to satisfy the Board that the requisite degree of proof has been met by Carrier to support the disciplinary action invoked.

The record reveals that both claimants were offered reinstatement effective September 1, 1967, which offer was accepted by claimant Moore, and declined by claimant Hart. Accordingly, compensation for all time lost, with seniority and vacation rights unimpaired pursuant to Rule 37 of the applicable Agreement will be granted from September 16, 1966, the date of discharge, through September 1, 1967, the date from which Carrier offered claimants reinstatement with all rights unimpaired, but without pay for time lost.

Claimants also seek six (6) per cent interest, insurance payments, and other so-called fringe benefits that may have been lost during the period they were improperly held out of service. The applicable provision of the Agreement restricts compensation payments to full pay for all time lost. Therefore, other remedies sought on behalf of claimants cannot be allowed within the limits of our authority (Awards 4793, 4866 and others).

AWARD

Claim is sustained as modified by the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1969.