

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
(  
( National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current Agreement, Electrician R. Evans was unjustly suspended by the National Railroad Passenger Corporation (Amtrak) when effective March 13, 1978, he was assessed seven (7) days of suspension.
2. That accordingly, the National Railroad Passenger Corporation be ordered to pay all wages lost on account of the suspension and that his service record be cleared of the charge.

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.

At the time of the suspension, the claimant was employed as an electrician and had approximately three years seniority.

On February 15, 1978, carrier elected to notify claimant to appear at a hearing at 1:00 p.m. February 24 regarding the following charges:

"Violation of Rule K of the National Railway Passenger Corporation Rules of Conduct by your failure to (attend to your duties) during working hours by improper workmanship on two SM-150 E.A.R.B. Safety Regulators on Car #5403 on February 2 and 3, 1978." Exhibit "A".

Rule K reads as follows:

"Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

Initially the organization argues that the charges should be dismissed because the hearing was procedurally defective. It was defective, they contend, because the hearing was recessed or postponed three times in violation of Rule 23(b). Rule 23(b), argues the organization, limits to one the number of postponements for a hearing. The carrier on the other hand argues that the organization waived their right to make this objection when they failed to make such objection during the course of the hearing. In reviewing the transcript, the Board cannot find any evidence of an objection to the recess or postponement of the hearing. As such, the Board concludes the procedure is sound and we will consider the case on its merits.

On February 2 and 3, the claimant was assigned to a position that was to inspect, and if necessary overhaul, regulator panels such as the ones in question. It was customary for employees in the claimant's position, upon completion of a regulator, to apply an inspection sticker bearing their initials to the panel. This sticker indicated the regulator was ready to be tested. The testing of the regulators was done by another employee, in this case a Mr. W. J. Kemp. This testing was done before the regulator was installed in a car. If the regulator didn't test out for any reason the panel was usually returned to a repairman such as the claimant.

To support the charges that Mr. Evans failed to properly overhaul the two regulator panels in question, the carrier points to the testimony of Foreman James Rhodes. Mr. Rhodes testified that the first regulator, which he had instructed the claimant to overhaul, was found to be defective. This was discovered when it was installed in car #5403. He detailed all the various aspects of the regulator which clearly established that it was not in working condition. He also testified that the second regulator panel was returned because the mechanic who was to install it noticed that this regulator was also not in working condition.

There is little doubt that the regulators in question were not in a functioning condition when they were delivered to the car to be installed. As a matter of fact, this is not really made an issue by the organization. The issue is whether the claimant was responsible for the regulators going to the car when they weren't in proper working condition.

In reference to the first regulator, the Board cannot say that there is substantial or sufficient evidence to conclude that the claimant was responsible for it going to car for installation in an improper manner. In regards to the first regulator, the claimant contends that it disappeared from the work bench before he had completed his work on it. There is considerable evidence to support this defense. First of all, it was clearly established that his sticker had not been applied to the regulator. Mr. Rhodes, the Foreman, had noted this fact in his testimony. Further, Mr. Evans testified that it is his customary procedure to apply the sticker only after overhauling a regulator. Secondly, Mr. Kemp, another electrician, testified that he removed the regulator from Mr. Evan's bench "thinking it was ready for testing". As noted earlier Mr. Kemp was the employee responsible for testing the regulators after they were overhauled but before they were sent to the cars for installation. Kemp further testified that Mr. Evans had not commented to him as to the status of the

regulator panel. While it might seem unusual for regulators to disappear before a repairman is finished with them, Mr. Evans further testified that panels have previously been removed before he finished them. Another employee's testimony (Mr. Steinbuch) collaborated Mr. Evans on this point. Steinbuch testified that as a repairman he had similar experiences. Further support for the claimant's position is found because his testimony and the testimonies of Mr. Kemp and Mr. Steinbuch stands unrefuted in the record.

The carrier argues that it is not true the regulator was removed from Evans' bench without Evans' knowledge. In their rebuttal they contend that the claimant was present at the time Mr. Kemp removed it from his bench and that there was a conversation at that time during which the claimant had every opportunity to indicate to Kemp that the panel wasn't ready for testing. In reviewing Mr. Kemp's testimony, the Board notes that Kemp testified he did have a conversation with Evans about the panel. However, Kemp testified only that Evans told him the panel was a "rush" job. The hearing officer's questioning and the resultant testimony of Kemp is not clear or precise enough to determine if the conversation took place at the time Kemp removed the regulator panel from Evans' bench. There is the distinct possibility that it took place at a time before or after the panel was removed from Evans' bench by Kemp. As a result, Mr. Evans' contention that the regulator panel was removed from his bench without him knowing it is still plausible and remains effectively unrefuted by the carrier. As a result, the Board cannot find that there is substantial evidence to support the charge. It was not shown by the carrier, as it is their burden in this case, that it was any fault of Mr. Evans that the first regulator panel went to the car for installation before it was in proper working order. The fact that the panel was removed from his bench without his knowledge was beyond his control. Further, the fact that the employee who did the final testing on the panel released it even though it was defective was also beyond his control.

Regarding Mr. Evans' responsibility in connection with the second regulator panel going to the car before it was in working order, we find similarly that this too was no fault of his.

The union argues that claimant was responsible for the regulator going to the car in an improper condition because he was told to "blow off" the regulator by his foreman, Mr. Rhodes.

The transcript established that a "blow off" is a procedure used by a repairman when a panel is needed in a hurry. It is a short cut whereby the repairman doesn't tear down a panel to inspect it but only blows off the dust, touches it up with paint and then releases it for electrical testing. The rationale for this procedure according to Foreman Rhodes is that not all regulator panels need to be completely torn down and overhauled. In the interest of time, sometimes a cursory inspection is done and the unit is electrically tested. Any problems not noticed in the "blow off" will be caught when the unit is tested.

The union's argument is that it was not Evans' fault that the defective panel was sent to the car because he was told not to tear it down and that he was not responsible for testing the regulator.

Mr. Rhodes, testifying before Evans, indicated he had not given Evans any special instruction such as telling him to perform a "blow off" procedure on the second panel. The testimony of Mr. Evans and Mr. Rhodes conflicts in regards to whether Evans was told to "blow off" the second panel.

The Board's function in discipline cases is well established. It is not the Board's function to act as the initial trier of facts. It is not our function to weigh the evidence or to resolve credibility issues or conflicts in testimony. Nor is it our function to substitute our judgment for that of the hearing officer. Our function as an appellate body is to review the transcript to determine if the evidence as a whole meets the requisite burden of proof. The requisite burden of proof on the carrier is that the charge must be supported by substantial evidence.

In reviewing the evidence as a whole it cannot be concluded that there is substantial evidence to support the hearing officer's conclusion as related to the second regulator. There is simply too much evidence to suggest that Evans was in fact told to do a "blow off" on this regulator panel. We believe this to be true for several reasons. First, it was clearly established that the panel was in a condition that would indicate a "blow off" was executed by Evans. The panel was present at the hearing and was inspected by Mr. Steinbuch, another repairman, and Mr. Keller, a tester. They both testified that the panel had been blown off. Secondly, both Steinbuch and Keller testified that "blow offs" were frequently done. Further, Evans and Keller both emphatically stated that "blow offs" are only done when so directed by a supervisor. The testimonies of Steinbuch, Keller and Evans remained unrefuted in the transcript. Lastly, we also note that Mr. Rhodes admitted telling another repairman to perform "blow offs".

The Board finds further validity in the claimant's defense. Because "blow offs" were frequent in cases where panels were needed in a hurry, it wasn't unreasonable for Evans to rely on the employee executing the electrical testing procedure. The testing procedure was often relied on to indicate if anything had been overlooked in the cursory "blow off" procedure. If there was anything per se wrong with executing a "blow off" on a panel and relying on the test procedure then it is hard to understand why the carrier's supervisors frequently direct employees to do them.

The fact that the second panel went to the car for installation in an improper working condition cannot be said, under the circumstances, to be the fault of Mr. Evans. There was an intermediate step between his function and the installation of the panel. The defects should have been detected at the test step which was not Evans' responsibility.

In view thereof, the Board finds there is not substantial evidence for supporting either charge and the claim will be sustained.

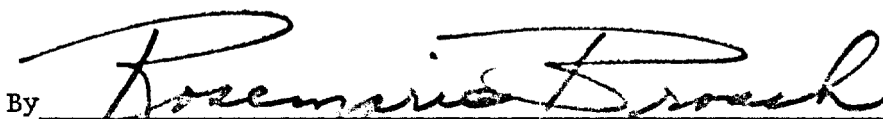
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of January, 1981.