

The Second Division consisted of the regular members and in addition Referee Albert A. Blum when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That the Consolidated Rail Corporation be ordered to remove the discipline of letter of reprimand from Machinist W. DiDonna's record.

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.

The Claimant, Machinist W. DiDonna, was charged by the Carrier for "(f)ailure to perform required inspection services of speed recorder tape on Locomotive 6379" on August 8, 1979. He was first suspended five days for this claimed offense but the suspension was later reduced to a letter of reprimand.

On August 8, the Claimant reported that he had checked Locomotive 6379 and signed the Locomotive Defect Form at 8:00 p.m. that day. He reported that the locomotive had no defects. The locomotive then was involved in an accident, and, as a result, Assistant Shop Manager D. J. Carhart examined the speed recorder tape of Locomotive 6379 at 8:00 a.m. on August 9. He found that the tape was not in the box but instead, among other things, was torn and wound around the idle stem wrongly. There was no seal on it.

The Claimant argues, and the Carrier agrees, that anyone could have broken the seal and tinkered with the tapes between the time the Claimant inspected it and the time the supervisor checked it the next day. Moreover, the Claimant points out and the Carrier agrees, that no one could be sure as to whether the Claimant was ever given the written instructions or training on the checking of speed recorder tapes. Moreover, the Claimant declares that there were no seals available to be used on the tape compartment.

It is clear that the Carrier did not insure that the Claimant had received proper instructions as to the procedures developed for handling the checking of speed recorder tapes. But it is clear that if the Claimant had discovered the speed recorder tape in the shape it was found by the supervisor twelve

hours after the Claimant signed that he had inspected it, the Claimant would have known how to correct the problem. The key question then is did he, in fact, inspect it and found it satisfactory and later someone tampered with it between 8:00 p.m. one day and 8:00 a.m. the next day, or did he fail to inspect it and thus did not notice the improper way it was installed? Both the Carrier and the Organization agree that there is no way of knowing for sure which happened although each differs as to what it believes happened. We have, however, one dangerous fact - namely, that a speed recorder tape could not be checked after an accident because of the shape it was in and the last person to inspect it was the Claimant.

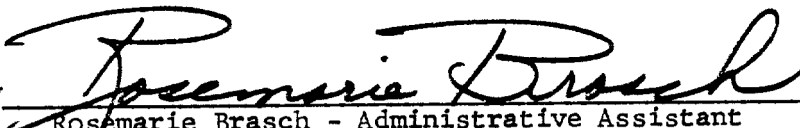
There is, therefore, substantial evidence, if not conclusive evidence, to support the extent of discipline given in this case. The Board, as shown in many previous cases, is not authorized to disturb a Carrier's discipline unless it is unjust, unreasonable or arbitrary. This is not true in this case. Since, however, the Carrier recognizes the possibility that someone may have tampered with the speed recorder tape, this fact ought to be made part of the Claimant's record and this should be done by attaching this ruling to the letter of reprimand.

A W A R D

Claim denied except as noted in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of June, 1982.