

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(
(National Railroad Passenger Corporation (AMTRAK)

Dispute: Claim of Employes:

1. That the National Railroad Passenger Corporation (Amtrak) be ordered to clear the record of Machinist Michael Foy of Forty-five (45) actual working days suspension held in abeyance for a period of six (6) months in accord with the prevailing Agreement dated September 1, 1977, as subsequently amended.

2. That the National Railroad Passenger Corporation (Amtrak) be ordered to clear the record of Machinist Dennis Daniel of a letter of formal reprimand and ten (10) actual working days suspension held in abeyance for a period of six (6) months in accord with the prevailing Agreement dated September 1, 1977, as subsequently amended.

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 employes 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 incident leading to this dispute occurred on January 5, 1981. At that time, Claimants Dennis Daniel and Michael Foy were working in the Wheel Truing Shop cutting wheels. Claimant Foy was the Operator of the Wheel Truing Machine. He was assisted by Claimant Daniel. It occurred that the left No. 1 wheel of the locomotive (on which they had completed the truing of the wheels) dropped down into the cutting area without the retaining rail being in place. The right siderail was closed and the wheel on that side was in its proper position on the rail. Both wheels had been properly trued. There was no damage to the equipment. However, it took from two to three hours to raise the left wheel and place it in its proper position on the siderail.

The Claimants were charged with violations of that portion of Rule H which requires employees to take every precaution to guard against loss and damage of Company property. After an investigative hearing, the Claimants were found guilty of the charges; however, the initial discipline assessments were lowered by the Carrier. A later offer to even further reduce the discipline assessed was refused on the grounds that its acceptance would be the same as an admission of guilt. Consequently, the Organization moves the contention that the evidence of record does not support the finding of guilt, asserting that the more likely cause of the wheel falling into the cutting area could be attributed to malfunction of the Wheel Truing Machine itself.

At the outset, the Organization vigorously argues that there was no damage to the Carrier's property as a result of the incident and therefore, a rule violation, as charged, has not occurred. The Organization is correct to the extent that material damage did not occur. However, the Board finds that the Carrier's construction of its rule is a reasonable one because the wheel had to be raised to its proper position, resulting in the loss of several hours of production.

With respect to the merits, the contention has been made that, had the Claimants completed the wheel truing procedure in the proper manner, the incident would not have occurred. In this regard, the Carrier holds that machine Operator Foy, prior to the final step of the process that led to the mishap, was to check with his Assistant (Daniel) to verify that the rails had securely slid back in their proper position. Thus, implicit in this assertion is the conception that the failure of Operator Foy to check with his Assistant before he activated the machine constituted improper operation of the machine. On the other hand, it can be argued that the Assistant to the Operator should have called out to him that the rail was not back in proper position. The record, however, is devoid of any showing that there indeed was an understood and regular procedure prescribed by the Carrier which was to be followed by the Operator and his Assistant with respect to checking with each other. Perhaps such a procedure is self evident; however, such has not been shown in the record.

With regard to the role of Assistant Daniel, the evidence clearly shows that he had no control on his side of the machine to stop the wheel from dropping. Moreover, there has been no showing in the record that there was sufficient time for him to notify the Operator that the rail had not slid back into position. Consequently, in view of the foregoing, the evidence of record does not support the charge with respect to Assistant Daniel, and his claim is sustained. The formal reprimand is to be removed from his service record.

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With respect to Operator Foy, by the nature of his position, he holds a greater degree of responsibility for the proper operation of the machine. It is a matter of record that the rail was not in place to receive the wheel, and that it was the Operator's primary responsibility to ascertain that all steps in the process following the truing of wheel were properly completed. However, given all the circumstances, as brought forth in the record, we find that the forty-five (45) day deferred suspension to be excessive and it is to be reduced to twenty (20) days deferred suspension as suggested by the Carrier in its letter of July 2, 1981 (Carrier Exhibit 9) in the record before us.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1984.

