

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

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Railroad Company be ordered to restore Machinist D. Spriggs to service and compensate him for all wages lost during this period to restoration, at the prevailing Machinist rate of pay.

2. That machinist D. Spriggs be restored to service with seniority unimpaired and compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost, in accordance with Rule 36 of the agreement effective January 1, 1947 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 Claimant was a Machinist Inspector at the Carrier's Gibson Enginehouse with a service date of June 23, 1976. An investigation was held on October 13, 1981 based upon the following charge:

"On September 23, 1981 you failed to properly perform your assigned duties on unit 8824 and falsified company and Federal documents."

As a result of the investigation, the Claimant was dismissed from the service of the Carrier, effective October 22, 1981.

On September 23, 1981, the Claimant was assigned to change airbrake equipment on unit 8824. He admitted that he did not inspect the locomotive for a "2Y" (24-month) airbrake test in accordance with Federal Railroad Administration regulations. The Claimant also acknowledged that he did not change the airbrake equipment on the unit. He explained that at the storehouse, he "found all we could change was the transfer valve, the independent [and] the blanking plate gasket **" and that he changed the gaskets because this was the only equipment available to him. However, the Claimant's signature appears on the Carrier and Federal forms certifying that the 24-month airbrake inspection had been conducted in accordance with the regulations. Enginehouse Foreman Jeffrey Barks went to the Storehouse the morning after the incident and found that it had all of the necessary materials for the 2Y and the airbrake equipment for unit 8824.

Contrary to the Organization's contention, the charge was adequate to inform the Claimant of the matter to be investigated. Indeed, the record discloses that before the investigation notice was sent to the Claimant, he was aware that the Carrier might "hold an investigation" concerning his conduct on September 23, 1981. Moreover, it is not essential that the Claimant's supervisor, who had resigned, was not present as a witness at the investigation. Even assuming, as the Organization contends, that the Claimant's supervisor knew that he had not completed the required work and permitted him to sign forms certifying to the contrary, (and there is no proof to that effect), the Claimant is not exonerated from committing such a serious offense. Moreover, the Board is persuaded that the used gaskets exhibited at the investigation were from unit 8824 and were not deliberately taken off another unit by the Carrier in order to support the charges against the Claimant.

The Claimant's record was properly submitted at the investigation for the purpose of determining the degree of discipline rather than to prove the Claimant's guilt concerning his conduct on September 23, 1981. In roughly over five (5) years of employment with the Carrier, the Claimant's record contains disciplinary suspension for offenses, ranging from insubordination, and leaving the service of the Carrier, to excessive absenteeism.

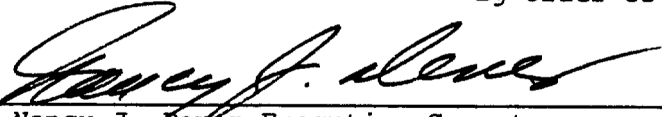
The Board is persuaded that the Carrier carried its burden of proving that on September 23, 1981, the Claimant failed to properly perform his assigned duties on unit 8824 and falsified both Carrier and Federal documents. In light of the Claimant's past disciplinary record, the Board concludes that there is no basis for disturbing the penalty of dismissal.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever-Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.