

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
(The Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly suspended Machinist B. L. Henington from service of the Norfolk and Western Railway Company for a period of ten (10) days beginning March 7, 1981 and ending on the date of March 16, 1981.
2. That accordingly, The Norfolk and Western Railway Company be ordered to compensate Machinist B. L. Henington in the amount of eight (8) hours at the pro rata rate for each day of his work assignment March 7, 1981 through March 16, 1981 inclusive.

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 claim occurred on December 16, 1980. At that time, the Claimant and another Journeyman Machinist were performing a semi-annual inspection on a locomotive. Part of this inspection entailed timing its engine. To perform this function, the engine overspeed governor had to be nullified with a block or jack. The Machinist working with the Claimant placed such a device on the engine. It ensued, after the Claimant returned from lunch, that he and the other Machinist started the engine before removing the blocking device. Since the governor was nullified, the engine went into overspeed, resulting in extensive damage to it. The Carrier charged both Machinists with equal responsibility for the incident and, following an investigation, assessed each with a ten-day suspension.

The Organization raises a due process contention in addition to an assertion that the Claimant should be absolved of all culpability, since the other Machinist had placed the block on the governor and, thus, the Claimant should not be the responsible party. It asserts that he should not be expected to "double check" the work of his fellow employe.

For its part, the Carrier essentially found that both Machinists had an equal responsibility in ascertaining that the diesel engine was in proper condition to start it and, therefore, the penalty assessed should reflect this finding of equal guilt.

The Board finds, with respect to the due process concerns, that the process used by the Carrier did not violate the contract.

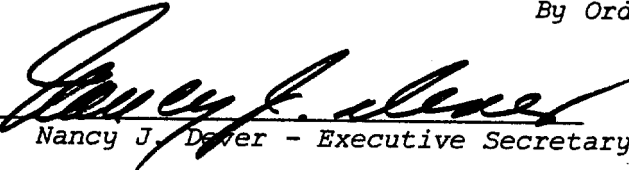
Concerning the substantive issues herein, the Organization's arguments are not without merit, particularly since it was not the Claimant who placed the block under the governor, and the Carrier acknowledged, during the investigation, that the Machinist who placed the block "would be responsible for removing it". Accordingly, while the Carrier's rationale leading to a finding of equal guilt based on the nature of the error and the position that the Claimant was a fully qualified Machinist (who knew that the block had to be removed before starting the engine) is not unreasonable, there is a notable degree of difference with respect to the role of the two Machinists, as acknowledged by the Carrier during the investigation. Therefore, while there is evidence in the record to support the charge, under the circumstances shown herein, the penalty assessed the Claimant was excessive. We find that a five-day suspension is more commensurate with the error on the part of the Claimant.

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 27th day of February 1985.