

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (

(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

Claim in behalf of Machinist C. R. Cobbs due to Carrier's violation of Rule 24-1 wherein they assessed five days actual suspension account alleged violation of Carriers' Rule 802. Claim is made to restore all lost wages, credit lost time toward vacation qualifying days and all other benefits lost due to this Suspension.

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.

Claimant was a Machinist in the employ of Carrier on December 15, 1983, when he was the subject of an Investigation in which he was charged with:

"Rule 802: Indifference to duty, or to the performance of duty, will not be condoned . . .

It being alleged you failed to detect worn flange on R #2 wheel of SP unit 9228 while performing your duties as locomotive inspector on December 4, 1983; it being a fact that said unit had to be removed from service on arrival at East St. Louis, where the R #2 flange measured 7/8", which is the federal condemning limit . . ."

He was found to be in violation of the charges and was assessed a five-day suspension from which he appeals to this Board.

A Carrier Quality Control Inspector inspected the wheel on the Locomotive in question at East St. Louis, Illinois. He testified that he inspected the wheel in three locations and got two readings of flange thickness of 7/8" and one reading of 29/32". During the course of witness testimony it was revealed that two types of gauges are utilized to measure thickness, one measures 7/8" and one measures 15/16".

The Claimant testified that he had inspected the wheel in Pine Bluff, Arkansas, a distance of three hundred and seventy five miles from the location where the defect was discovered. He stated that he had put the 15/16" inch gauge on the wheel and it would not accept this gauge. He testified that he also checked it with the 7/8" gauge which it would not accept. He testified that he could not roll the wheel, therefore there would be places on the wheel which could not be checked.

Evidence also revealed that the engine had or should have had a full wheel report seven days before it was inspected by the Claimant. At that time it would have been easy for the inspectors to have turned the wheel and examined all areas of it. No bad wheel report was made at that time.

A Carrier Supervisor testified that his instruction to the work force was to report any wheel that was less than 1". However, he testified that he was uncertain as to whether he had conveyed this to Claimant, an employee of short tenure. Claimant testified that he would report a wheel that would accept the 15/16" gauge and because the wheel would not accept this gauge, he saw no reason to report it.

The Federal Railroad Administration regulations concerning wheel thickness state that any wheel flange worn to a thickness of 7/8" or less is considered defective. The Carrier employees responsible for the measurement of these flanges have an affirmative duty to diligently inspect and report any wheel that does not meet the requisite tolerance. The testimony established that this Carrier had a thickness criteria that exceeded the Federal limit.

In a discipline case the burden of proof rests squarely on the Carrier. In this case there was only a short time frame since a comprehensive wheel inspection which revealed no serious defects had been made. There was a distance of several hundred miles traversed by the wheel since the Claimant had made his inspection. There was uncontroverted evidence that it was not possible for Claimant to roll the wheel to check all areas. The only evidence of the infraction was circumstantial. While circumstantial evidence is permissible and often convincing, here the circumstances of the change in the wheel thickness was clouded by too many intervening factors to convince this Board that the case against the Claimant was proved.

We hold that the Carrier has failed to meet its burden of proof and we will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1986.