

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

(International Brotherhood of Firemen & Oilers
Parties to Dispute: (
(Green Bay and Western Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer J. Tomaschefskey, Green Bay, Wisconsin, was unfairly dismissed from the service of the Green Bay and Western Railroad Company effective August 6, 1984.

2. That accordingly, the Carrier be ordered to make Mr. Tomaschefskey whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service, and the mark removed from his 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 employee or employees involved in this dispute are respectively carrier and employees 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 an employee of the Carrier on the evening of July 27, 1984. His conduct on that date led to an Investigation of the same in which he was charged with:

"You will appear for a formal investigation to be held at the General Office . . . to develop the facts and determine your particular responsibility, if any, as to alleged damage caused to arc welding generator, the steps on Engine 313, and platform

used for locomotive inspection, while you were backing Engines 313 and 311 into the Back Shop, and your alleged failure to report such damage, which occurred at approximately 11:15 p.m. on July 26, 1984 at Green Bay, Wisconsin while you were in charge of the 3:00 p.m. to 11:30 p.m. Laborer's Assignment on July 26, 1984".

As a result of the facts adduced at the Investigation, together with Claimant's past disciplinary and safety records, the Investigating Officer found that the Claimant's responsibility for the damage and his violation of relevant Carrier rules had been established and dismissed him from the service of Carrier.

The facts were essentially undisputed. Claimant was performing one of his usual duties of moving engines into the roundhouse. He testified that he had turned on the lights in the back shop and afterwards had walked the tracks in the shop to check for any obstructions. He observed that an arc welder-generator was extending over the track. He unplugged it and turned it sideways to allow the engines to pass unobstructed.

He was moving two coupled engines and had his choice of which engine to operate the consist from. He chose the back unit. This vantage point offered much less vision of the shop than he would have had if he had made the choice to operate from the front unit. As he moved the engines into the shop he heard the scraping of metal and stopped the engines. He inspected and found that he had not allowed sufficient clearance between the engines and the arc welder and had consequently run into it. There was extensive damage to the welder and some damage to the engine and inspection platform.

Claimant did not report the damage to anyone. At the Investigation he admitted that he knew a Dispatcher and a Trainmaster were on duty. He indicated that he intended to report the damage the next morning, but by this time it had been discovered.

Claimant exercised poor judgment in his method of shoving the engines and was extremely remiss in not reporting the accident and the damage. If the engine had been allowed into service in its damaged condition, Federal Safety Rules would have been violated. Nevertheless, an accident of this nature, even considering the non-disclosure aspect, would usually not be grounds for dismissal.

The Investigating Officer apparently recognized this in assessing discipline. In his dismissal letter he stated:

"A review of your personnel file shows an unconcerned attitude toward your job, with eleven incidences of tardiness and absence from duty without authorization. Your personnel file also indicates a disregard for safety. You had eleven personal injury reports and three separate incidents involving property damage".

Although the disciplinary matters were not of the same nature, as stated they exemplify indifference toward his work. Also quite relevant were the incidents of property damage. The Carrier must be allowed at some point in time to assess the totality of the employee's performance to determine whether there appears to be any hope that he will become a satisfactory employee. In the instant case the Carrier has obviously made the determination that this employee is not going to change his habits to raise himself to the standard of performance required by the Carrier.

Given the severity of the infractions in this case and the multitude of offenses in Claimant's history with the Carrier, we could not be justified in substituting our judgment for the judgment of the Carrier.

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 6th day of August 1986.