

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(International Association of Machinists and  
( Aerospace Workers, AFL-CIO  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

1. That the Consolidated Rail Corporation be ordered to remove the fifteen (15) day suspension from the record of Machinist R. Lento.
2. That the Consolidated Rail Corporation be ordered to compensate Machinist R. Lento for all lost time at the applicable machinist rate of pay, due to the suspension in accordance with rule 7-A-1 (e) of the May 1, 1979 Agreement.
3. The Agreement of May 1, 1979 was controlling.

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 entered Carrier's service on June 13, 1969. On November 16, 1983 and December 21, 1983, Claimant was present at an Investigation on the charge that he improperly inspected Unit 3178 on or about September 7, 1983 "...which resulted in premature failure and removal of Number 3 traction motor and wheel assembly on September 24, 1983." Following the Hearing, Claimant was assessed a fifteen day deferred suspension.

At the Hearing, Carrier's Superintendent of Motor Power testified that on September 24, 1983, Locomotive Unit 3178, Train TV 14, was set off at Beacon Park Diesel Facility due to a continuous wheel slip. The cause of the locomotive failure was traced to an improperly secured gear case, resulting in loss of gear case lubricant, excessive wear to the #3 pinion gear and the improper operation of the #3 wheel armature.

The record also establishes that the locomotive in question was shopped at Selkirk Diesel Terminal on September 7 and 8, 1983, for an annual inspection. This periodic maintenance included inspection of all locomotive truck components, journal boxes, and wheels. Claimant performed this inspection, and in his signed report did not make reference to a defect of the nature described above.

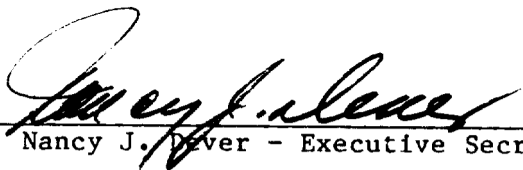
Carrier asserts that had the Claimant performed the inspection properly, the improperly secured gear case would have been noted and corrective action taken, thereby preventing the wheel malfunction that caused the locomotive failure. After careful review of the record evidence in its entirety, however, the Board finds lacking the substantial evidence necessary to prove the charges against Claimant. Essentially, the Carrier's claim is one of improper or substandard work performance - negligence on the part of the Claimant. Yet, the Carrier never offered proof to support two crucial aspects of a negligence claim. Absent here is the necessary evidence that Claimant's inspection was less than adequate or complete. In addition, Carrier did not prove the second element of negligence: that Claimant's inspection was the proximate cause of the locomotive failure. As the Organization convincingly showed at the investigation, there were at least several other equally likely causes for the malfunction, including damage to a gear pan, which might have unknowingly occurred after the inspection. In short, we must agree with the Organization that mere surmise and conjecture are not evidence, and where the Carrier has failed to meet its burden on the essential elements of its charges, we must rule to sustain the grievance.

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 16th day of March 1988.