

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and Aerospace
(Workers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation, (Amtrak) violated Rule 24 of the schedule agreement effective September 1, 1977, when it arbitrarily and capriciously dismissed Chicago Machinist S. Larson following investigation held on April 21, 1988.

2. Accordingly, the decision should be reversed, Machinist S. Larson restored to service with all rights, seniority and benefits unimpaired, made whole for any and all losses as a result of the decision, and his record cleared of any reference to the charge.

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 were given due notice of hearing thereon.

Claimant was assigned to perform maintenance functions. On February 20, 1988, at the completion of his assignment, Claimant signed off as having properly performed his duties. Claimant initialed the form indicating completion of the renewal of "wicks and wick oil in the traction motor suspension bearings and lock wire cap screws" of Locomotive No. 386.

By letter dated March 15, 1988, Claimant was notified to attend a formal Investigation alleging that Locomotive No. 386 was found to have water present in the support bearing wells, although the work was signed off as having been completed. After two postponements, an Investigation was held in absentia on April 21, 1988. Following the Investigation, the Carrier concluded that the Claimant was guilty as charged. The Claimant was dismissed from the service of the Carrier, effective May 4, 1988.

The Organization has argued that the Investigation went forth without further postponement, even though the investigating officer was aware that unusual circumstances precluded adequate preparation and notice to the Claimant. The Organization further argues that the results of the capricious Investigation failed to prove that the Claimant was guilty of the alleged failure to complete his assignment.

The Board's careful review of the Investigation transcript finds sufficient probative evidence that the Claimant was guilty as charged. The record indicates that the Claimant was assigned to properly "review wicks and wick oil for traction motor suspension bearings" for Engine No. 386. Testimony is sufficient to conclude that Claimant did indicate completion of the work. A Machinist testified that the drain plugs of Engine No. 386 did not appear to have been removed and that his further inspection found water in motor numbers three and four. This was confirmed by the Foreman. The Foreman also testified that the oil was contaminated and the water could have diminished proper lubrication causing a derailment.

The facts of this case clearly support the Carrier's findings of guilt. The Board's review of the on-property record finds no procedural errors. An Investigation held in absentia is insufficient to warrant the conclusion of a Rule violation denying Claimant a fair and impartial Investigation (Second Division Awards 10343, 9943; Third Division Award 20113). Having concluded that the Claimant received all of his Agreement protected rights and that the probative evidence substantiates Carrier's conclusion of guilt, the only remaining issue for this Board to consider is the assessed discipline.

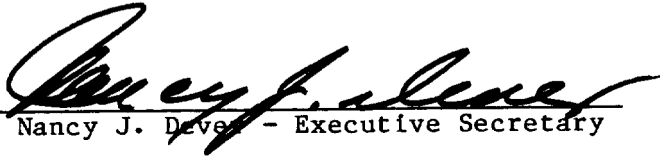
As the Carrier has noted, falsifying a report of work performed has been found by this Board as warranting dismissal (Second Division Awards 4199, 6546). Employees are expected and required to perform their work diligently and to make proper reports to the Carrier. This the Claimant failed to do and for that there can be no excuse for his wrongdoing. Claimant must know that falsification of a work report is a serious act of dishonesty for which dismissal is fully justified. Without mitigating guilt, the Board finds the instant discipline was excessive given the circumstances at bar and the Claimant's past disciplinary record. Claimant is to be returned to service on a last chance basis with seniority rights and benefits unimpaired, but without compensation for time lost.

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 18th day of September 1991.