

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12438
Docket No. 12492
9-2-2-92-2-7

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Florida East Coast Railway Company

STATEMENT OF CLAIM:

1. That at New Smyrna Beach Locomotive Shop, on October 24, 1990, with reference to Electrician J. R. Thompson's, formal investigation, the Florida East Coast Railway Company assessed discipline of ten (10) days actual suspension December 5 through December 18, 1990. That Florida East Coast Railway Company has violated the controlling agreement, and particularly Rule 26, Discipline Hearings, alleging that the preponderance of evidence developed that Mr. J. R. Thompson simply failed to perform his duties properly, for had he done so, he would have detected that the ground coil relay wire on the No. 3 traction motor was disconnected and had to be reattached.

2. That Electrician J. R. Thompson be compensated eight (8) hours for each regular assigned work day beginning December 5 through December 18, 1990, at the pro rata rate for all lost wages, be made whole for all vacation rights, made whole for all health and welfare and insurance benefits, made whole for all pension benefits, including Railroad Retirement and Unemployment Insurance, and made whole for any other benefits that Claimant would have earned during the time he was held out of service, and personnel record be completely cleared.

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.

On August 7, 1990, the Claimant performed assigned maintenance work on Locomotive 437 at the New Smyrna Beach Locomotive Shop. Upon completion of the work, the locomotive was towed to Bowden and then operated as power on Train 125 from Jacksonville to Miami. It arrived in Miami on August 8, the following day. Although an occurrence described as a ball of fire emanating from beneath the locomotive occurred enroute, the maintenance people at Hialeah were unaware of any problem with the locomotive when it arrived. When they went to fix the locomotive on the next train, a ground fault was noticed on a locomotive attached to Locomotive 437. Both locomotives were then inspected and it was determined that the coil wire was off the ground relay on Number 3 traction engine on Locomotive 437. Claimant was charged with failing to perform his duties properly as he should have detected that the coil wire was off the ground relay. Following a Hearing he was assessed the penalty herein complained of.

The Organization raises the defense that the Claimant did not receive a fair and impartial Hearing because of the manner in which the tapes of the Hearing were transcribed. It notified the company that their information revealed that the transcriber was being assisted by supervisory employees. An investigation by the Carrier revealed that the transcriber had in fact asked two of the witnesses to proofread a portion of their testimony to insure accuracy because the tape was difficult to understand. In order to avoid further complications, the tapes from this and other investigations were removed from New Smyrna to St. Augustine to be transcribed by General Office personnel. The Carrier refused the Organizations request for an independent transcriber but did furnish a copy of the transcript and made the tapes available for review at the General Offices during normal working hours. The Organization made no effort to review the tapes. Having declined the opportunity to check the tapes and transcript for accuracy, it cannot now claim that the transcription is inaccurate. We find that the Hearing was conducted in the normal manner and was fair and impartial.

Claimant testified that on August 7 he took over from another electrician, was briefed by that person on the work he had accomplished and the proceeded to thoroughly check and repair the problem. He stated that in addition he looked over the whole locker and the ground relay coil wire was not disconnected. During the work two Supervisors had inquired regarding Claimant's progress and he had shown them what he had found and then proceeded with his repairs. After the work was completed he again showed the Supervisors what he had done and felt they were pleased with his work. The Carrier does not refute the statement regarding the Supervisors participation. There seems to be little agreement on what caused the so called ball of fire enroute. The General Diesel Supervisor speculated that the locomotive had a ground action of some kind. In his testimony he suggested that it might have been a ground problem or wheel slip. In any event, the train proceeded to its destination without incident. Nothing in the record proves that it was caused by Claimant's actions. When queried by the person who conducted the Hearing if it was possible for the wire to fall off in transit, the Carrier witness

testified "I really don't know." The General Diesel Foreman who conducted the inspection at Hialeah testified that the machinist who assisted him megged the locomotive. It is not clear in the record how many times this was accomplished or at what stage of the inspection the megging was accomplished. According to the testimony of a Carrier witness, the coil wire is pulled off the ground relay anytime a megging is conducted. If the inspector followed proper procedures, the coil wire could have been pulled off the motor during the inspection.

Locomotive 437 traveled almost 400 miles after Claimant completed his inspection without incident attributable to Claimant's completed work. To conclude that the Claimant is guilty as charged the Board would have to deny all the possibilities inherent in the operation for error on the part of others associated with this incident. The record simply does not sustain such a decision.

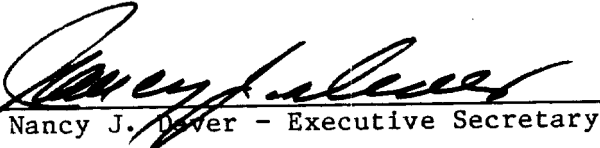
Based on the foregoing and the entire record we find that the Carrier did not prove by a preponderance of evidence the Claimant is guilty of the charge. He is to be paid for all time lost and his record is to be expunged relative to this matter.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1992.