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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13260

Docket No. 13068

98-2-95-2-93

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
**(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)**

STATEMENT OF CLAIM:

“(1) That in violation of the current agreement, CSX Transportation arbitrarily disciplined Machinist D. E. Hunt by unjustly assessing a five (5) days actual suspension.

(2) That, accordingly, CSX Transportation be ordered to compensate Machinist D. E. Hunt five (5) days pay at the pro-rata rate of pay and that his record be cleared immediately.”

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 employee 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.

The Claimant was summoned to an investigative Hearing concerning his responsibility "in connection with failure of No. 11 and 14 Power Assemblies on Unit 2066 while at load test on February 24, 1994." The Claimant, together with another employee, had performed mechanical work on Unit 2066 on February 23, 1994.

Work on Unit 2066 also had been performed on some earlier date and was returned to the Locomotive Shop for further repair or adjustment. As a result, the same "package" of mechanical records was utilized -- thus apparently leading to the confused events which followed.

On February 23, 1994, first shift employees were assigned to but did not complete work on Unit 2066. The first shift Supervisor wrote the following on one of the "package" work sheets:

"Applied #11 and 14 PA [Power Assembly]

Torque #11 and 14 Baskets

Torque cyl head crabs"

The record shows substantial lack of concurrence as to these three entries, including whether or not they were on the sheet at the time of the turnover to the second shift. The Board finds as the most reasonable the following analysis: The first shift Supervisor did write the three entries, and he had the employee(s) involved in the power assembly application sign that they had done so. His intention was to show the second and third tasks as left undone, although this is hardly crystal clear. This is borne out by the Hearing record, transcribed by stenographers obviously unfamiliar with what was being discussed, which repeatedly, and erroneously (or maybe accurately), records various readings of the last two entries as beginning with "Torqued."

The record further shows that the second shift Supervisor gave the Claimant and his partner general instructions to "finish up" Unit 2066 before moving on to another assignment. There is no dispute that the Supervisor made no specific reference to the need to torque the bolts on the already installed power assemblies. The two employees performed work on Unit 2066 and made proper records of what they accomplished. This did not include torquing the bolts on power assemblies 11 and 14, because, according to the Claimant, there was no reason to believe that the power assemblies had

not been fully "installed." (There was contradictory testimony as to whether the bolts were painted, which would have indicated that they had been torqued.)

It was later determined that Unit 2066's breakdown the following day was initially caused by the fact that the bolts had not been torqued.

There is the further issue of the signatures next to the second and third of the handwritten entries quoted above. The Claimant denies having signed his name next to these two entries, which would have indicated that he (and his partner) had completed the work. Again, the Board is required to make its best analysis: Torquing of the "cyl head crabs" was one of the tasks performed by the Claimant and his partner; thus, it would properly be signed. Why signatures appear next to the basket-torquing entry cannot be determined.

The Board does not undertake lightly the responsibility of disputing the conclusions of the Hearing Officer and Carrier as to the testimony and evidence of an investigative Hearing. Here, however, the Board necessarily reaches a different conclusion as to the Claimant's responsibility. In the unusual circumstance of an almost but not fully completed first shift task (power assembly), clearer direction from both first and second shift supervision was required. The handwritten entries were irregularly placed and ambiguous. The Claimant carried out general instructions to "finish up" Unit 2066 and accurately recorded what he had done.

The discipline letter issued following the Investigation read, in pertinent part, as follows:

"... you were charged with failure of #11 and #14 power assemblies on locomotive 2066 while at load test on February 24, 1994. . . .

The facts that were developed have been evaluated in a thorough and impartial manner and you have been found guilty as charged."

The Board concludes there was enough blame to go around, as evidenced by the Hearing record. However, the Carrier has not met its burden of proof to hold the Claimant and his partner responsible for the power assembly failure on the day following their work.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 18th day of May 1998.