

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13290

Docket No. 13039

98-2-95-2-52

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

(International Brotherhood of Electrical Workers,
(System Council No. 14

PARTIES TO DISPUTE: (

(Southern Pacific Lines (Denver & Rio Grande Western
(Railroad Company)

STATEMENT OF CLAIM:

- "1. That the Southern Pacific Lines (Denver & Rio Grande Western Railroad Company) violated the controlling Agreement, in particular Rule 32, but not limited thereto, when they unreasonably, unjustly and arbitrarily assessed a five (5) day suspension to Electrician J.W. Miller beginning April 17th through the 21st, 1994, following an investigation held on April 6, 1994, and;
2. That accordingly, the Southern Pacific Lines (Denver & Rio Grande Western Railroad Company) should be ordered to compensate Electrician J.W. Miller for eight (8) hours each day, at the prevailing rate of pay of FLI Electricians at Burnham Shops, Denver, Colorado commencing April 17, 1994 through and including April 21, 1994, all applicable overtime, with all seniority rights unimpaired, make him whole for all vacation rights, make him whole for all health and welfare and insurance benefits, make the claimant whole for all pension benefits including Railroad Retirement and Unemployment Insurance, and for any and all other benefits that the claimant would have earned during the time withheld, any record of this arbitrary, unjust, unfair discipline action be expunged from his personal 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 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 subject to an investigative Hearing on April 6, 1994 under the following charge:

“ . . . to develop the facts and place responsibility, if any, in connection with your alleged failure to follow proper procedure when inspecting the fan rotation on locomotive 9622 on March 10, 1994, which led to a subsequent failure on March 15, 1994, while working as an Electrician, on the 3:00 p.m. shift at the Burnham Shop.”

The Claimant was charged with possible violation of Safety and General Rule 1007, Conduct, which include the following:

“Indifference to duty, or to the performance of duty, will not be condoned.”

The Board does not find the procedural objections raised by the Organization to be of determinative substance. The Claimant was advised of the specific charge against him. The Claimant was provided with the opportunity to present his view of the circumstances involved in the incident under review. There was opportunity for questioning of him by the Organization's representatives.

The Organization faults the Director, Mechanical Operations, for referring, in his appeal response, to a charge in a separate investigative Hearing. The Claimant was

subject to two separate Hearings on April 6, 1994. The discipline administered in the other Hearing is reviewed in Second Division Award 13289. It would have been preferable if the Director, Mechanical Operations, had replied separately to each of the two claims. His combined answer, however, did not adversely affect the Claimant.

The testimony of another Electrician, who worked on the same locomotive the following day, did not offer convincing proof that the Claimant had properly completed the test in question.

The Carrier concluded that the Claimant had failed or otherwise neglected to carry out one of the electrical checks required of him while assigned to locomotive 9622 on March 10, 1994. The Carrier further concluded that this was the cause of the failure of the locomotive to operate properly several days later. From the record made at the Hearing, the Board has no reason to find this was an unreasonable analysis. While there obviously was no direct observation of the Claimant's work, the Board, after full examination of the record, has no reason to find that this was an unreasonable analysis or that the resulting five-day suspension was inappropriate.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 15th day of June 1998.