

Award No. 144

Docket No. 148

2-CRI&P-MA-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** That Charles Brown, machinist helper, of Valley Junction, Iowa, who was suspended from the service on May 6, 1936, on account of failure of engine No. 4037 on passenger train No. 6, on April 20, 1936, in which a derailment occurred, be reinstated in the service with seniority unimpaired and compensated for all time lost due to said suspension.

**EMPLOYES' STATEMENT OF FACTS:** Engine No. 4037 was held in the Valley Junction shops on April 20, 1936, for work on engine truck wheels.

Jimmie Riccio, a second-class machinist, assisted at intervals by First-Class Machinist Verplank, was assigned to the job of taking up lateral on same, and Charles Brown, machinist helper, assisted him in doing the work.

The engine went out and failed, due allegedly to the use of defective binder bolts used on the job for which Brown was taken out of service, along with Riccio, the second-class machinist, and a first-class machinist by the name of Verplank.

**POSITION OF EMPLOYES:** That Brown, although assigned to assist a mechanic of any class, should be held accountable for that mechanic's ability to perform his work in a mechanical manner to the extent of suspension, seems very unfair and incredible, as his duties are only to assist with, and not to supervise, the work of the man who is directly responsible for the job.

Owing to the fact that there were three men involved, and the testimony taken at the investigation resulted in a confliction of statements as to which one performed certain parts of the work, we are submitting five copies of investigation, which we will list as Exhibits A, B, C, D and E; also, sworn affidavits of two machinists—Walter Erickson and Charles Edwards, who were employed at Valley Junction at that time—and listed as Exhibits F and G to support our contention that Charles Brown, machinist helper, did not perform any work other than to assist second-class machinist in the performance of his duties connected with this job, and should not be held accountable for the workmanship of same.

The question of the choice of representatives and not the fact that Brown failed to properly perform the duties connected with assisting the man assigned to this job (which is borne out by a sworn statement signed by Mr. Brown before a notary public on the 5th day of May, 1936, and which we are listing as Exhibit H), we feel to be the real reasons behind this man's dismissal. Therefore, we are requesting that Brown be returned to service with his seniority rights unimpaired and compensated for all wage loss due to said suspension.

he had assisted in doing work of this character a good many times,—on questioning he concurred in the thought that he had assisted in such work as much as a thousand times.

There is no justification for Brown's statement that he, as a helper, had no responsibility for applying parts which he knew from his experience were not proper. Such a position is untenable on the part of any employee. Regardless of the responsibility of a supervisor or of any other employee, it is incumbent upon each employee to take the safe course, when there is any question of a doubt. Mr. Brown admits he applied parts which he knew were not of the proper size, and even conceding that these improperly threaded bolts were handed to him by the machinist whom he was helping, Brown still cannot escape his responsibility for this engine failure, derailment and near serious accident.

Verplank, Riccio and Brown must share the responsibility for this derailment and near serious accident; they were all very clearly guilty and were dismissed from the service. They were all returned to service on the plea of their respective representatives that even if they were guilty as charged, they had profited by their punishment and that no further benefit would accrue to the carrier by keeping them out of service, and because of their length of service with this carrier, and in a spirit of leniency, they were all returned to service after being admonished that in the future each of them must do the things expected and required of him, and each assume his share of responsibility for work performed.

Riccio waived claim for time lost.

These men were all guilty and the claim of Verplank and Brown that they should be paid under the last provision of Rule 36 of the agreement between the employees and this carrier, cannot be supported, because that rule provides for payment of time to employees who have been unjustly suspended or dismissed.

A perusal of the investigations will leave no doubt as to the responsibility of each of these employees.

Neither Verplank nor Brown was unjustly dismissed and their claim should be definitely declined.

**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.

The parties to said dispute were given due notice of hearing thereon.

Prior to the date of hearing of this case on the original claim representatives of the employees and of the carrier agreed upon the reinstatement of Machinist Helper Brown with seniority rights unimpaired, leaving for the Division to decide only the claim of compensation for time lost.

The evidence of record does not fix the responsibility upon Helper Brown for the failure of engine No. 4037.

#### AWARD

Claim of employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 11th day of March, 1937.