

**Award No. 972**

**Docket No. 890**

**2-LV-MA-'43**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**LEHIGH VALLEY RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That on and since December 18, 1942, the carrier has unjustly dealt with Machinist John Childs, by terminating his rights to work through suspension or dismissal or both, without any bonafide reason or cause whatever, within the meaning of the controlling agreement.
2. That in consideration of the aforesaid, Machinist John Childs be:
  - (a) Reinstated with his seniority rights unimpaired.
  - (b) Compensated for all time lost retroactive to and including December 18, 1942.

**EMPLOYEES' STATEMENT OF FACTS:** At the Manchester, New York enginehouse, the carrier maintains supervision and machinists twenty-four hours a day, seven (7) days a week, and the hours of shifts are:—

- (A) First: 7:00 A. M. to 3:00 P. M.
- (B) Second: 3:00 P. M. to 11:00 P. M.
- (C) Third: 11:00 P. M. to 7:00 A. M.

The first shift relieves and takes over the unfinished work of the third shift, the second shift relieves and takes over the unfinished work of the first shift and the third shift relieves and takes over the unfinished work of the second shift, and, the claimant was regularly employed on the third shift.

John Childs was employed at Manchester enginehouse on March 30, 1918, and worked as a machinist until July 1, 1922, when the shopmen's strike was called. Childs returned to work at Manchester enginehouse as a machinist on November 1, 1923, and from November 1, 1923, to the date of his suspension or dismissal, Childs had worked as a machinist leader and also a foreman.

The claimant was serving the International Association of Machinists as local chairman of the grievance committee when he was suspended or dismissed from the service of the railroad company.

It is the practice in all enginehouses, when quitting time interrupts the completion of the job, the mechanic will advise the foreman that the job was not completed. The neglect of Mr. Childs in the instance of December 17 was particularly reprehensible as the foreman was at the engine shortly before quitting time, and Mr. Childs did not give any intimation to him that he would not finish the job, and as there was sufficient time to do the work after he left the engine, the foreman had every reason to believe the job was completed by Mr. Childs.

These two occurrences indicated gross negligence and lack of proper interest in his work by Machinist Childs. There is no surer way for a machinist to wreck an engine and possibly the train which the engine is handling, as well as trains on the opposite track, than to do what Machinist Childs did in these two cases. It was, therefore, concluded that it was not safe to continue Mr. Childs in our service.

While the committee in appealing Machinist Childs' case claimed that he was not given a proper investigation, there is no merit in this contention, but, because it may be used in the employes' submission, I call attention to the fact that in each case Machinist Childs was afforded a fair hearing, strictly in accordance with the agreement covering his craft. In the case of December 11, he was asked if he desired to have a representative present, and he stated it was not necessary. In the case of December 17, his committeeman accompanied him and sat in at the investigation. In both cases, he was asked if his statements were taken in a fair and impartial manner and in accordance with his agreement, and he replied that it was.

The facts indicated above were outlined to representatives of employes in discussing the case on the property.

The services of Machinist Childs were such as made it undesirable to continue him in service, and we ask that our action in the case be sustained.

**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 employe 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.

The evidence of record supports the following conclusions: That Machinist Childs signed the Locomotive Inspection Report for such work only as he had actually completed, in conformity with the established requirements; that he did not sign for the tightening of the knuckle pin; that observance by Foreman Smock of the fact that the tightening of the knuckle pin had not been signed for might have prevented the engine failure; that the foreman appears to have acted improperly in affixing his signature to the report and releasing the engine; that verbal notice by the machinist to the foreman that the knuckle pin had not been tightened might also have prevented the engine failure; that whether such an obligation rested on the machinist, because of an established practice on the property or otherwise, is a matter of controversy; that the responsibility of the machinist cannot justly be determined independently of the responsibility of the foreman; that an impartial investigation of all the surrounding circumstances was required; that such an investigation should have been held on the property, prior to the dismissal, and not through the medium of this Board, after the dismissal had been protested; that the questioning of the machinist by the management, without the participation of the foreman and of such other witnesses as might have thrown light upon the usual procedures in connection with unfinished repairs, did not

constitute such an investigation, or the "fair hearing" specified in Rule 37 of the agreement; that in these circumstances Machinist Childs was unjustly dismissed; and that he is entitled to reinstatement, with seniority rights unimpaired, and to compensation measured by what he would have earned as machinist in his regular assignment since December 18, 1942, less such amounts as he may have actually earned in other employment during the same period.

AWARD

Claim sustained on basis and to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 3rd day of November 1943.