

Award No. 1325

Docket No. 1261

2-KCS-SM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 3, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Sheet Metal Worker T. E. Passmore, was unjustly deprived of his service rights from March 25, 1948 to April 4, 1948, inclusive, under the current agreement and that accordingly the carrier be ordered to compensate him for all time lost during aforesaid period.

EMPLOYES' STATEMENT OF FACTS: Sheet Metal Worker T. E. Passmore, hereinafter referred to as the claimant, was employed by the carrier as a sheet metal worker at Pittsburg, Kansas, on October 25, 1926, and was regularly assigned as a sheet metal worker from 4:00 P. M. to 12:00 P. M. at the time he was suspended from service during the above mentioned period.

Under date of March 21, 1948, the claimant was notified to appear for an investigation at 9:00 A. M., Tuesday, March 23, 1948, and a copy of said notification is herewith submitted and identified as Exhibit A.

Investigation was conducted on March 23, 1948, by L. W. Van Nattan, supervisor Diesel equipment, and a copy of the investigation record is herewith submitted and identified as Exhibit B.

On March 24, 1948, the claimant was notified that he was disqualified as a sheet metal worker on Diesel locomotives, and a copy of the mentioned notification is herewith submitted and identified as Exhibit C.

On March 29, 1948, L. W. Van Nattan, supervisor of Diesel equipment, notified the claimant that instead of disqualifying him for Diesel work, he would be suspended from service for the period of March 25, 1948, to April 4, 1948, inclusive, and a copy of the referred-to notification is herewith submitted and identified as Exhibit D.

This dispute has been handled in accordance with the provisions of the current agreement, effective April 1, 1945, with the highest designated officer to whom such matters are subject to appeal, with the result that this officer declined to adjust this dispute.

POSITION OF EMPLOYES: On March 23, 1948, an investigation was held and conducted by L. W. Van Nattan, then supervisor of Diesel equip-

Although Diesel Mechanic Dittman claimed he noticed Passmore was pulling the bolts extra tight and Helper Variot stated from the power Passmore was putting on the bolts it seemed to him they were tight, there was nothing in the transcript of the evidence to indicate whether this took place before or after Passmore took the pipe down the second time due to its leaking where the manifold connects with the engine.

The fact that the Diesel stood at Pittsburg for some little time before it left on a road trip does not justify the assumption that something happened to cause the leaks during that period. No evidence was submitted to prove that anything was done while the engine was at Pittsburg following the time Passmore worked on it to cause the leak. The whole thing simply boils down to the fact that the work he did failed to stand up when the engine went into service.

We do not agree with the contention that the McManamy interpretation of the old National Agreement prevents this company from suspending shop employees for just cause. The sort of discipline that existed during the period of Federal control 30 years ago certainly does not have any bearing upon the discipline which the Kansas City Southern has the right to assess at this time.

At no time has any allegation been made that the investigation was not conducted in a fair and impartial manner.

It is respectfully requested that the claim be denied.

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 testimony of claimant that he properly installed manifold, tightened bolts and tested job, was uncontroverted, except inferentially by fact of road trouble occurring fifteen minutes after Diesel was placed in service. At that point engineer in charge reported that nuts were loose on water pump connection. Several employes testified, corroborating claimant's testimony that he had pulled the bolts extra tight and that no leaks were apparent either upon test after installation or during the fourteen-hour period following repairs and prior to the Diesel being turned over to its train crew. Work reports were introduced, dated three days before, showing similar trouble had been experienced with subject engine.

The evidence relied upon by the carrier is so highly speculative in face of the direct evidence submitted upon behalf of claimant that the disciplinary action complained of is found arbitrary and unwarranted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1949.