

Award 3514
Docket 3480
2-UP-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105
RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O.
(Electrical Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement, Electrician W. N. Hoffman was unjustly dealt with when Carrier removed him from their Service for alleged failure to make a proper load test on unit 1438 B, July 3, 1958.

2. That accordingly the Carrier be ordered to reinstate W. N. Hoffman with all rights unimpaired and that he be compensated for all time lost.

EMPLOYEES' STATEMENT OF FACTS: W. N. Hoffman, claimant, was working as an electrician on the 12 midnight to 8:00 A.M. shift on July 3, 1958, at the Salt Lake Shops. He was assigned by his foreman to make a power check on three diesel units hooked together. Unit 1438 B, was the middle unit of the three. The claimant made the power check at approximately 6:00 A.M., (which would be July 4, 1958). After the completion of the power test the three units were moved to the outbound end of the running repair track.

At approximately 7:30 A.M. on this morning of July 4, 1958, this set of three units were moved by the crew to the Depot, which is about one mile. The units were then coupled to a troop train departing for Pocatello at about 8:00 A.M. the morning of July 4, 1958.

On July 8, 1958, claimant was given notice to report to the office of superintendent of shops for investigation. This investigation was called for Friday, July 11, 1958, at 8:30 A.M. Claimant was charged with failure to make proper load test of Unit 1438 B, the middle unit of the set that he had made power check on at 6:00 A.M., the morning of July 4, 1958.

Claimant requested and was granted a postponement of the investigation from Friday, July 11, 1958 to Tuesday, July 15, 1958 at 8:30 A.M. The investigation was held as scheduled. It was claimed by the carrier that claimant had failed to make proper power check of unit 1438 B, at 6:00 A.M., July 4, 1958,

all units assigned to a train which have come through shop servicing and testing will power. It should be self-evident that if they do not so function that the responsibility must lie with shop personnel when the units have been released for road service.

Since the failure of the unit in this case was due to improper testing, the assignment of responsibility is firmly fixed. Examination of carrier's Exhibit A, "Form 4343-Trip Inspection Report for Diesel Electric Units," reveals under Item 8 that the improper power check was made by Claimant Hoffman whose signature was identified at the investigation.

There is no clear and unambiguous evidence in the testimony of any of the claimant's witnesses at the investigation which significantly rebuts the carrier's case in this docket. Moreover, even if it could be concluded that there was a conflict in the testimony of the carrier and organization witnesses at the hearing, it is too well established to warrant citation of authority here that the Board will not attempt to resolve conflicts in the testimony of witnesses. This has long been recognized as the indisputable province of the investigating officer who has the witnesses before him and is in a better position to judge their credibility.

The evidence that Claimant Hoffman failed to properly load test unit 1438 B on the date in question is clear and unequivocal. It has not been effectively rebutted by the organization. On the contrary, the organization in the handling on the property has completely failed to produce any competent evidence to support its claim in this case that Electrician Hoffman was unjustly dealt with as alleged when carrier removed him from service. Accordingly, the organization has failed to sustain its burden of proof in this docket and the claim must fail for want of support.

As to the measure of discipline, the negligence in this case was extremely serious and clearly merited the discipline assessed. It is not necessary that negligence result in an accident, damage to equipment, or even personal injury in order to gauge the gravity of a particular duty deficiency. Failure of locomotives to deliver operating power due to the inexcusable negligence of an employe could have serious consequences as any experienced railroader can attest. For example, such operation under certain circumstances involving steep grades and the like, could have serious consequences to life and limb as well as property. In any event, such a serious infraction of duty must not be condoned under any circumstances. Accordingly, such a flagrant violation of duties and responsibilities compelled the discipline here assessed. The Board should not usurp a legitimate managerial prerogative by disturbing the discipline in this docket.

It cannot be reasonably contested that a complete and unprejudiced hearing was granted this claimant; the record is replete with sufficient evidence to support the findings; and the serious infraction of duty merited the discipline assigned. In view of this fact, the Board should not overturn the discipline.

For the reasons assigned herein this claim should be dismissed, or in the alternative, denied, because of its complete lack of merit.

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 employees 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 is sufficient to justify Carrier's conclusion that claimant failed to make a proper load test on a diesel unit and therefore was guilty of negligence in the performance of his assigned duties during the third trick at Salt Lake City on July 3, 1958. As a result, the main line train which included this unit was delayed in moving to Ogden, Utah, due to the fact that said unit was not delivering any power for the operation of the train. Claimant became liable to discipline by reason of his negligence.

We are mindful of the Carrier's obligation and responsibility for ensuring that the inspection of its equipment is properly conducted by its employees. We nevertheless are of the view that the penalty of dismissal was excessive and therefore an abuse of discretion in the subject instance. We note that claimant's service record, although only four years in length at the time of dismissal, is free of any previous disciplinary action. A disciplinary suspension equivalent to six months loss of time is sufficient penalty for claimant's offense.

AWARD

Claimant shall be reinstated with all rights unimpaired and shall be compensated for such wage loss as was incurred for the period beginning as of January 3, 1959.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 30th day of June 1960.

STATEMENT OF CARRIER MEMBERS RE: AWARD NO. 3514

We do not disagree with that part of Award 3514 finding that the evidence at the hearing justified the Carrier's conclusion that the claimant failed to make a proper load test and that he negligently failed to perform his duties. We also concur in the Division's sound rejection of the technical arguments advanced by the Organization concerning the hearing. We dissent, however, to the Division's interference with the Carrier's judgment as to what discipline was "a sufficient penalty" in a situation involving a proven dereliction of duty.

D. S. Dugan

D. H. Hicks

M. E. Somerlott

P. C. Carter

R. P. Johnson