Award No. 3772
Docket No. 3673
2-NYC&St.L-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement The New York, Chicago and St. Louis Railroad Company unjustly withheld Machinist A. Starke from service for the period beginning January 19, 1959 to January 30, 1959 inclusive.

2. That accordingly The New York, Chicago and St. Louis Railroad Company be ordered to compensate Machinist Starke for his wage loss during the aforementioned period.

3. That accordingly The New York, Chicago and St. Louis Railroad Company be ordered to remove all indication of its aforementioned action from Mr. Starke's record.

EMPLOYES' STATEMENT OF FACTS: Mr. A. Starke, hereinafter referred to as the claimant, is employed as a machinist by The New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the carrier, at Calumet Yards, Illinois, where the carrier maintains an enginehouse. Claimant is carried on the machinists' roster at Calumet Yards enginehouse with seniority date of December 2, 1922.

An investigation was conducted by Assistant Master Mechanic Trapp on December 16, 1958, in the office of the general roundhouse foreman, as a result of charges being placed against claimant that he had failed to perform his duties in a workmanlike manner on December 11, 1958.

Under date of January 14, 1959, claimant received a notice from the general roundhouse foreman that he, the claimant, was being assessed ten days' actual suspension beginning January 19, 1959 to January 30, 1959 inclusive.

This dispute has been handled up to and including the highest designated officer of the carrier with whom appeals are subject to be handled with the result that he has declined to adjust it.

The agreement, effective October 1, 1952, is controlling.

have contented themselves with generalities only, as is clearly shown by the following quotations from letters by the general chairman:

> "The facts developed from the investigation which was held do not, in any way, prove that Mr. Starke was responsible." (Carrier's Exhibit "G")
>
> "It would appear that Mr. Starke was given the suspension more on the assumption of guilt * * *." (Carrier's Exhibit "I")
>
> "The facts brought out during the investigation, most certainly, do not bear out the contention that Mr. Starke was necessarily responsible." (Carrier's Exhibit "K")

There is not one word here denying the fact that Claimant Starke did the work and that an examination showed that the work had been improperly performed.

Claimant Starke, in his statements at the investigation, made the implication that because of the time interval between his having worked on the engine and the discovery of the defect, a different party was responsible. Such statements can only be taken to mean that between the time Claimant Starke completed the work on the afternoon of December 11, 1958, and the time that the engine was dispatched on the morning of December 12, 1958, some unknown party, with malice aforethought, entered the engine compartment, loosened up the spinner nut, took off the cross bar, placed the strainer in a cocked position, then replaced the cross bar, tightened up the spinner nut, and closed the engine compartment. The carrier submits that any such hypothesis of malice or sabotage is highly improbable in view of the actual and known facts. The claimant's implication must therefore fail.

The sole basis on which the discipline of ten days suspension in this case has been appealed to your Board is that claimant was "unjustly withheld". On the property the general chairman made unsupported general statements to the effect that discipline was applied on the assumption of guilt and that the facts do not bear out the contention that the claimant was necessarily responsible.

Against these negative contentions, the carrier submits that there was substantial and positive evidence to support the charge which was introduced at a formal investigation, that the carrier acted in good faith and without ulterior motives, that the discipline applied was not capricious nor arbitrary, and that under these circumstances such discipline should not be disturbed.

The carrier asks that the claim be denied in its entirety.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The claim is that claimant's ten day suspension constituted the exercise of "arbitrary power based on capricious judgment" because he testified that he properly installed the lubricating oil strainers and the record lacks proof to the contrary.

Claimant performed the work and made the final inspection. When the diesel engine was returned to service next day it worked unsatisfactorily on the first seven miles of its initial thirteen mile run. On examination one of the two oil strainers was then found unseated and cocked at an angle, with consequent low pressure.

Claimant testified that "to the best of my knowledge" the strainers were in place when reinstalled, and that "they appeared to be OK". He stated as his opinion that if the strainer had been out of position he would have seen it, but when asked if it could possibly have been overlooked, he stated that "anything could happen to a human being" and that "it could have". Asked how on his test the gauge could have shown 50 lbs. pressure although after the seven mile run next day it only showed 7 to 10 lbs. he stated: "Evidently the oil was still cold and that always shows more pressure", and that he could not account for the difference next day "unless the oil got thinned out more", which it presumably would have done in a seven mile run.

It is argued that if the strainer had not been properly seated the oil leak would have been apparent when he twice ran the engine to complete his tests; the argument should be even more pertinent concerning the seven mile run next day, but it was apparently not discovered until search was made for the cause of the engine's unsatisfactory performance.

Claimant mentioned that a night had intervened between his work and the subsequent engine run; but there is no evidence or even suspicion of sabotage, and the mere possibility that meantime someone would and could have loosened the bolts and placed the strainer at an angle, or that it could have happened during the short run, is too remote to be seriously entertained.

Claimant showed by his frank and fair testimony that while he was not actually conscious of any default or oversight, he recognized that it could have happened and that he could not explain away the circumstances which indicated that it actually did happen. Presumably that fact and his 35 years of service without prior charges, so far as the record shows, were given consideration in assessing the relatively light discipline imposed. The record clearly fails to support the accusation of the use of arbitrary power based on capricious judgment.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.