

Award No. 3839

Docket No. 3819

2-NP-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O.
(Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That electrician F. W. Fields was given an unwarranted five (5) days actual suspension from the services of the Northern Pacific Railway Company, from July 29, 1959 to August 2, 1959 both dates inclusive.

2. That accordingly the Carrier be ordered to reimburse Mr. Fields the five (5) days wages and remove the disciplinary mark from his record.

EMPLOYEES' STATEMENT OF FACTS: Electrician F. W. Fields, hereinafter referred to as the claimant, was employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, on March 19, 1945 and was regularly assigned as an electrician from 7:00 A. M. to 3:00 P. M., Saturday through Wednesday, with Thursday and Friday as rest days, at Livingston, Montana Diesel Shop.

Under date of June 22, 1959 the claimant was notified by letter to report to the office of Master Mechanic C. J. Wirth, Livingston, Montana at 9:30 A. M. Tuesday, June 23, 1959 to ascertain the facts and determine his responsibility for the damage to the main generator of Diesel Electric Locomotive Unit No. 6012-C which took place while this unit was in service between Livingston and Laurel on June 18, 1959.

The claimant was charged with violation of Rules 701 and 712 of the safety rules and admonitions for the general guidance and protection of all employees and the public and excerpts from the operating rules and general instructions in that he did not see that the ground relay knife switch was

In Award No. 1157, also rendered with Referee Sidney St. F. Thaxter participating, this Division again restated the general principle enunciated in Award No. 993 in the following language:

"The general rule is that the imposition of discipline is the prerogative of management and this Division will not review a decision for which there is a reasonable basis."

In Award No. 1323, rendered with Referee J. Glenn Donaldson participating, this Division restated in the following language the basic principle that has been repeatedly epitomized by this Division in its several awards involving disciplinary cases:

"Be that as it may, it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carrier's in disciplinary matters, unless the Carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion."

In Award No. 1389 of this Division, rendered with Referee E. B. Chappell participating, this Division said:

"The primary question presented for decision is whether or not such action of the Carrier was arbitrary, unreasonable or unjust. Being a discipline case, it is elementary that the Division cannot substitute its judgment for that of the Carrier unless it was so tainted with one or more of such three elements of injustice."

Rule 39 of the July 1, 1955 shop crafts agreement reads in part:

"* * * If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and shall be compensated for wage loss, if any, resulting from said suspension or dismissal."

Mr. Fields was not found blameless. He was derelict in the performance of his duties on June 17, 1959 and consequently was amenable to discipline. The discipline assessed was neither excessive or capricious. The charges preferred against this employe were amply sustained by the evidence developed at the investigation. The measure of discipline was compatible with Mr. Fields' dereliction. This Division should not now superimpose its judgment over that of management and remove the discipline assessed against this employe.

The evidence adduced at the investigation on June 23, 1959, conclusively shows that Mr. Fields failed to fulfill his responsibility as an electrician on June 17, 1959 by improperly performing his duties in violation of Rules 701 and 712 of the safety rules and admonitions and that the carrier's action in administering discipline was neither arbitrary or capricious. The claim covered by this docket should therefore 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 were given due notice of hearing thereon.

Electrician Fields is shown to have finally certified the locomotive for service after load testing. He failed to ascertain whether the ground relay knife switch was properly sealed both before the load test and afterwards. By his own admissions he should have done so. This is tantamount to saying that a reasonable prudent electrician would have done so in the light of the fact that several men had performed work over a period of two days. The fact that this particular inspection was not specifically his job is not material. By the exercise of some care he could have averted the damage and the facts were sufficient to give him notice that the relay knife switch might be open.

There is a distinction between this claim and Award 3838. There the work was uncompleted. Here the claimant had no reasonable basis for anticipating that someone else would make the inspection. He certified the equipment and his failure to act was the proximate cause of the ultimate happening.

Being of the opinion that there was evidence sufficient to justify the determination and being also of the opinion that the moderate punishment inflicted was not legally excessive we conclude that the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20 day of September 1961.