

Award No. 4135
Docket No. 4064
2-CNO&TP-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

**THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY CO.**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the current agreement when they unjustly suspended Electrician R. S. Boyd, Jr., from service pending an investigation on August 2, 1960 and unjustly dismissed him on August 8, 1960.

2. That accordingly the Carrier be ordered to compensate Electrician R. S. Boyd, Jr., for all time lost during the period of August 2 through August 24, 1960.

EMPLOYEES' STATEMENT OF FACTS: Electrician R. S. Boyd, Jr., hereinafter referred to as the claimant, was employed by the Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the carrier, at its Chattanooga, Tennessee, Diesel Shop, since November 27, 1950.

Under date of August 4, 1960, 10:25 A. M., Electrician R. S. Boyd, Jr., was given an investigation by Manager K. L. Pollitt, Chattanooga, Tennessee, Diesel Shop, Chattanooga, Tennessee.

Under date of August 8, 1960, Manager K. L. Pollitt, directed a letter to the claimant advising him that he was guilty as charged and discharged him from the service of the carrier.

Under date of August 24, 1960, Manager K. L. Pollitt, directed a letter to the claimant advising him that he was being restored to service with all seniority, job and vacation unimpaired, but without pay for lost time.

Under date of August 30, 1960, Local Chairman C. C. Williams directed a letter to Manager K. L. Pollitt, advising him that he was claiming pay for all time lost by Electrician R. S. Boyd, Jr., covering a period from August 2 through August 24, 1960.

Under date of October 24, 1960, Manager K. L. Pollitt directed a letter to local chairman, in which he declined the time claim.

(b) The disciplinary action was imposed in good faith without bias or prejudice. It was taken with the view of punishing the guilty and setting an example for others—that carrier's interests, as well as the interests of its patrons and its stockholders and bondholders be fully protected.

(c) Following the principles of its prior awards in the light of the evidence of record here presented, the Board cannot do other than make a denial award.

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.

Carrier contends that claimant, when making an electrician's test in the course of duty, failed to correct, or to report, a then defective ground relay on the diesel-electric locomotive unit here in question. To the contrary, claimant contends said ground relay was in proper working condition when he tested it. The Carrier admitted that Claimant knew how to check or test such a ground relay. And there seems to be nothing in the record which would justify an assumption that, if Claimant found the ground relay defective when checked, he would not have repaired or reported it. Therefore, we must assume that if the ground relay was at that time defective the Claimant was negligent in failing to discover that fact during his check of the diesel locomotive:

Claimant made such check of the locomotive July 27, 1960, but, according to the record, thereafter for several days this diesel unit functioned properly and travelled many miles. After leaving Chattanooga, Tenn., it went to Birmingham, Ala., thence to Selma, Ala., then back to Birmingham and on to Meridian, Miss., from there it was enroute back to Birmingham on August 1st before trouble developed and the main generator was found to have burned up. Later this diesel unit was towed back to Chattanooga where an inspection disclosed a defective ground relay. The Carrier avers said relay was defective at the time of Claimant's test July 27th; that it then should have been found by him and corrected, or reported, and that his failure in that regard caused the generator of the diesel unit to be burned up quite a few days later, to wit—on August 1st.

x-1
It is admitted by Carrier that Claimant did test this diesel-electric locomotive unit on July 27th, and the burden of proof is upon the Carrier to show that the ground relay was then defective and that Claimant did nothing to correct it, or report it. There is no direct evidence in the record proving that the ground relay was defective at that time, but Carrier urges upon us the assumption that it must then have been defective; thus, upon the further assumption that nothing could or did occur in the next four or five days and several hundred miles of travel and operation to cause the ground relay thus to become defective. (We find it difficult to make such assumptions in the face of the record wherein appears evidence that the ground relay could have become defective from other causes) between the time of Claimant's test, July 27th, and the eventual generator damage on August 1st.

As was said in Second Division Award 1769 (Carter): "We do not think Electrician Staib was subject to discipline **under the evidence**. Discipline must be based upon something more than a mere suspicion or possibility that an employe failed in his duties." Award 1769 was cited with approval in Award 1969 (Donaldson) where a claim was sustained "for want of proof of the charge made." And again in Award 4046 (Anrod) this Division held: "**Mere suspicion is not sufficient to prove that he committed the offense** for which he was discharged Hence, his discharge was not for just and sufficient cause." (Emphasis ours). X-2

From a review of the record we conclude that the evidence relied upon by Carrier is too speculative to support the charge made; that there has been a failure of proof on its part and that Carrier's position cannot be upheld. X-2

Accordingly, we hold that the claim should be sustained and that Claimant should be compensated for all time lost by him during the period August 2 through August 24, 1960.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1963.