

Award No. 4521
Docket No. 4461
2-CNO&TP-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier, without proper cause and in violation of the controlling agreements, on March 3, 1962, suspended Machinist H. B. Barrett from service and on March 7, 1962 held a formal investigation and without sufficient cause and in violation of the current agreements terminated his service.

2. That accordingly, the Carrier be ordered to properly apply the applicable rules of the agreements and compensate Machinist H. B. Barrett for all time lost from March 3, 1962 until March 30, 1962, upon which date he was reinstated to the Carrier's service without pay but with all rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: H. B. Barrett, hereinafter referred to as the claimant, is employed by The Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the carrier, as a machinist at the Citico Shops, Chattanooga, Tennessee, with a seniority date of August 17, 1959. Continuous prior service with the carrier as a machinist dates back to January 16, 1945.

On March 3, 1962, at approximately 6:00 P. M. the claimant was performing his regular assigned duties, which, at the moment, consisted of working up Item 7, "Condition of Brake and Signal Equipment" of Interstate Commerce Commission's Form 1057, "Monthly Locomotive Unit Inspection and Repair Report". While the claimant was thus engaged on Locomotive Unit 4169, that unit moved approximately fifty (50) feet and struck another locomotive.

The claimant was charged with "failure to properly operate the controls of Diesel Unit 4169, causing this locomotive to move and strike Diesel Unit 6306 resulting in considerable damage to both locomotives". He was adjudged guilty and suffered the subsequent loss of wages for which claim is made. In

Attention is directed to the following additional awards of the Fourth Division:

257	671	901	1124
264	677	912	1152
337	755	978	1201
375	796	1008	1218
401	804	1048	1241
574	844	1081	1268
622	899	1102	1270

The board, guided by the principles of its prior awards, has no alternative but to deny the claim and demand here presented by the Association.

CONCLUSION: Carrier has shown conclusively that:

(A) The effective agreement in evidence was **not** violated as alleged by the association, that to the contrary, it was complied with.

(B) The charge against Machinist Barrett was proven and that he was therefore suspended and dismissed for just and sufficient cause.

(C) The discipline administered was not imposed as a result of arbitrary or capricious judgment or in bad faith. Carrier's action was in good faith and is fully supported by the evidence of record and by principles of awards of all four divisions of the board.

Machinist Barrett was charged with, and proven guilty of, failure to properly perform his duties in that during the second shift, 3:00 P.M. to 11:00 P.M., March 3, 1962, while completing work on item 7 (condition of brake and signal equipment) of form 1057, "Monthly Locomotive Unit Inspection and Repair Report," he failed to properly operate the controls of diesel electric locomotive unit 4169, causing this unit to move forward and collide with unit 6306, resulting in considerable damage to both locomotive units. Having been reemployed by carrier at its election on a leniency basis following his dismissal for cause, he does **not** have any contract right to be paid the compensation here demanded on his behalf. The board cannot, in these circumstances, do other than make a denial award. It cannot substitute its judgment for that of carrier for it is without authority to do so.

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.

Parties to said dispute were given due notice of hearing thereon.

Upon a review of the record, the Division finds that the discipline imposed by the Carrier was for just and sufficient cause. The record discloses

that, even if full weight was given to the Claimant's defense that the Foreman and fellow Electrician worker were guilty of negligence in moving the locomotive under its own power from the Diesel Shop to transfer table outside the Diesel Shop and also of changing the controls on the engine without informing the Claimant thereof, nevertheless the Claimant was guilty of contributory negligence in failing personally to exercise reasonable due care and diligence in order to make sure that the power controls on the locomotive were in such a position that the locomotive could not move while he conducted his assigned signal and braking tests.

The Division cannot accept the Claimant's contention that he is exculpated from all responsibility for the accident because he had deactivated the power controls on the locomotive when he originally commenced his testing operation and before he was interrupted by the Foreman in question in the performance of his duties. The record reveals that there was a hiatus of approximately 20 minutes before the Claimant resumed his testing and because of this elapsed span of time, reasonable caution demanded that the Claimant re-check the position of the power controls before resuming the testing. The record further indicates that it would not have required any extra-ordinary efforts on the part of the Claimant to have specifically ascertained whether the generator switch was open or closed and whether the reverser lever was in neutral position. The failure of the Claimant to perform these routine but necessary checks cannot be absolved because the Foreman and the fellow worker did not also meet their required standards of due care.

In brief the Claimant, as an experienced journeyman, cannot be excused from carrying out reasonable and necessary precautionary measures required by the operations he was performing because of the alleged delinquencies of his fellow workers.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1964.