



**Award No. 4759**

**Docket No. 4725**

**2-C&O-MA-'65**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**The Second Division consisted of the regular members and in  
addition Referee Dudley E. Whiting when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)  
THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
(SOUTHERN REGION)**

**DISPUTE: CLAIM OF EMPLOYEES:** 1. That under the current agreement Machinist A. B. Harding, Jr., was unjustly found at fault by Master Mechanic W. S. C. Burwell and penalized by receiving five (5) days overhead suspension with a threat that if there was any cause for future discipline within a three (3) months' period, his five (5) days suspension would be actual suspension.

2. That accordingly the carrier be ordered to clear Machinist A. B. Harding, Jr.'s record of any fault with the performance of machinist work on Engine 5863 on July 9, 1963 at Richmond, Va.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist A. B. Harding, Jr., hereinafter referred to as the "Claimant", was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the "Carrier", for approximately 22 years. The carrier, represented by Mr. W. S. C. Burwell, master mechanic, C&O Shops, Richmond, Va., notified the claimant to appear for investigation at 9 a.m. July 23, 1963 in master mechanic's office at Richmond, Va., on charges of being responsible in connection with inspection of Locomotive 5863 and execution of Locomotive Inspection Report, Form L 431, on July 9, 1963, at Fulton Shops, Richmond, Va. Subsequent to the investigation, carrier's Master Mechanic W. S. C. Burwell directed the following letter to claimant:

**"THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
Richmond, Virginia—July 31, 1963—c/cm  
"117-1**

**Mr. A. B. Harding, Jr.  
Machinist  
Fulton Shops  
Richmond, Virginia**

Even if we agree with the employes' that Foreman Hundley was guilty of an infraction, it does not follow as they allege that Harding should not have been disciplined. Regardless of any wrongdoing on the part of Foreman Hundley, which the carrier does not concede, the guilt of claimant remains. He was no less guilty of an infraction because another employe may or may not have been guilty of some other transgression.

Harding was charged with certain duties to perform. These duties were required by I.C.C. rules beyond the authority of the carrier to question or alter. The importance of their careful performance is well established. Harding could not ask the foreman to step in and assume his role and responsibilities merely because he told the foreman that a defect had been found. To the contrary, the foreman in turn affirmed Harding's responsibility by telling him to include such defect on his inspection report.

All divisions of the board have ruled in countless decisions that the carrier's action in discipline cases will not be disturbed unless there is a showing of arbitrariness, capriciousness or abuse of discretion.

Exemplary is Second Division Award 3772 (Referee Johnson) which involved a machinist who was suspended for improper performance of work in installing lubricating oil strainers in a diesel unit. Claim that the carrier was arbitrary and capricious was denied, the opinion holding ". . . that while he was not actually conscious of any default or oversight . . . he could not explain away the circumstances which indicated that it actually did happen . . . the record clearly fails to support the accusation of the use of arbitrary power based on capricious judgment."

Similarly, no such showing can be made in the instant case. As this was Harding's second offense, the imposition of five days overhead suspension for a three-month period was extremely light. He suffered no monetary loss, the discipline now being only a notation on his service record.

**CONCLUSIONS:** The carrier has shown:

1. That Harding's guilt was proven absolutely.
2. That the offense committed was a serious one, creating a potentially hazardous condition and subjecting the carrier to action by the Interstate Commerce Commission.
3. That Harding violated direct instructions of his foreman.
4. That Claimant cannot escape responsibility by attempting to blame the foreman.
5. That carrier's action in disciplining claimant was fully warranted.

**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.

It is undisputed that claimant failed to record on Locomotive Inspection Report Form L-431 a brake defect he found in his inspection of Diesel Unit 5863, nor that it was his responsibility to so record such finding. The excuses offered do not relieve him from fault or from liability to discipline for that failure to fulfill his responsibility, but are entitled to consideration only in mitigation of the penalty imposed.

**A W A R D**

*Claim denied.*

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy  
Executive Secretary**

**Dated at Chicago, Illinois, this 24th day of September, 1965.**