

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rule 32, when they unjustly dismissed Machinist E. P. Sparr from service on January 17, 1977 for allegedly failing to properly perform the duties of Machinist Inspector when inspecting Unit 1915 at approximately 5:00 a.m., December 23, 1976, specifically, failing to report defects in the securement of gear cases.
2. That accordingly, the Missouri Pacific Railroad Company compensate Machinist E. P. Sparr at the pro rata rate of pay for each work day beginning January 17, 1977 until he is reinstated to service. In addition, he shall receive all benefits accruing to any other employes in active service, including vacation rights and seniority unimpaired.
3. Claim is also made for Machinist E. P. Sparr's actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance.
4. In addition to the money claimed herein, the Carrier shall pay Machinist E. P. Sparr an additional sum of 6% per annum compounded annually on the anniversary date of said claim in addition to any other wages earned elsewhere in order that he be made whole.

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.

An investigative hearing was held on January 12, 1977, pursuant to Agreement Rule 32 to determine Claimant's responsibility, if any, in connection with his alleged failure to report defects in the securement of gear cases on Unit 1915 on December 23, 1976 at North Little Rock, Arkansas. Claimant was subsequently found

guilty of failing to perform properly the duties of Machinist Inspector and dismissed from service, effective January 17, 1977. This disposition was appealed on the property and is presently before us for adjudicative consideration.

In reviewing this case, we have carefully scrutinized the investigative transcript to ascertain objectively whether a specific cause, effect relationship existed between Claimant's purported failure to inspect appropriately Unit 1915 and the derailment which occurred later that day at Longview, Texas, some 230 miles from North Little Rock, Arkansas.

While a defensible presumption exists, especially based upon the Master Mechanic's testimonial reconstruction of the incident, that Claimant was perhaps negligent in his inspection, we do not think that it provides a conclusive assessment of the derailment. Instead, it reflects a speculative analysis which is predicated solely upon circumstantial evidence.

On the other hand, except for the Machinist Helper, who lubricated the traction motor gear case on Unit 1915 and who testified that he did not see any defects in the securement, there were no other eyewitnesses who personally examined the equipment that night or knew of any defective condition. The discipline was imposed primarily upon theoretical considerations.

This Board has consistently held as a matter of administrative due process that the burden of proof in disciplinary proceedings rests exclusively upon the employer. It is a fundamental tenet of the judicial process. We have rejected persuasive assertions structured upon suspicious circumstances. In Second Division Award 6419, we held in pertinent part that, "The best that can be said in favor of the Carrier is that there exists a suspicion that the Claimant may have been negligent. Mere suspicion is not sufficient to prove that he committed the offense for which he was discharged." We believe this principle is foursquare on point with the facts herein. (See also Second Divisions 7172, 5572 and 4928.) Accordingly, we are compelled by the record to compensate Claimant for all time held out of service in accordance with Rule 32. However, there is no basis for payment of hospital and/or insurance benefits as outlined in part 3 of this claim, nor is there any basis for the interest requested in part 4 of the claim.

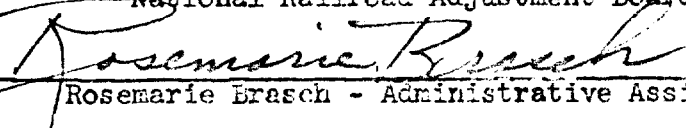
A W A R D

Claim sustained as set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of January 1980.