

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

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

Dispute: Claim of Employes:

Claim in favor of Machinist Helper M. D. Johnson, Fort Worth Lancaster Shop, at the current pro rata rate of pay for all time lost. The applicable punitive rate of pay for all overtime for which he would have been available from the time he was removed from service at 12 noon, February 13, 1978, and six percent (6%) per annum interest until he is reinstated with all negotiated rights under the provisions of the controlling Agreement effective August 1, 1969, as amended, wherein he is made whole. This due to the Carrier's violation of Rule 24 in said Agreement.

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.

The claimant herein was employed as machinist helper at Carrier's Mechanical Facility at Fort Worth, Texas, and had about two and one half years of service. On the night of January 18, 1978, and early morning of January 19, 1978, from 11:30 P.M. to 7:30 A.M., claimant was assigned to work at Carrier's Diesel facility. On January 30, 1978, he was notified to report for formal investigation:

"... to develop facts and place your responsibility, if any, for your alleged failure to perform your lubrication duties between 11:30 PM, January 18, 1978 and 4:30 AM, January 19, 1978, by not lubricating units 2540 and 2561, resulting in failure of unit 2540 while in train EFY-19, which caused derailment at Odessa, Texas at approximately 5:00 PM, January 20, 1978.

If you desire witnesses or representatives, you must arrange therefor in accordance with applicable scheduled agreement."

The investigation was conducted on February 7, 1978, as scheduled. Claimant was present throughout the investigation and was represented. A copy of the transcript of the investigation has been made a part of the record. We have carefully reviewed the transcript of the investigation and the entire record before the Board. We find that the investigation was conducted in a fair and impartial manner. On February 13, 1978, claimant was notified of his dismissal from service.

In the investigation a supervisor stated that he had signed another employee's name to the lubrication records for Units 2561 and 2540. The Organization contends that when the lubrication records were checked by claimant Johnson and he found that another employee's name indicated the particular units had been worked, he was not obligated to recheck the lubrication on those units unless he was specifically told to do so and that he was not told to lubricate the specific units involved.

It is unfortunate that a derailment occurred, causing considerable damage, which apparently resulted from Unit 2540 not being properly lubricated.

After a thorough examination of the entire record in the case, we find the evidence not sufficiently convincing to satisfy the Board that the requisite degree of proof, or substantial evidence, has been presented to support the disciplinary action against the claimant.

The record shows that the claimant was reinstated to service as a machinist helper on January 12, 1979. We will award that he be paid for time lost from date of dismissal to date of reinstatement, less any amount that he may have earned in other employment during that period. There is no rule support for the 6% per annum interest claimed, and that portion of the claim is denied.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By

Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1981.