

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  
                                  { St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

That Machinist R. E. Ritter was unjustly suspended from service four (4) days as the result of an investigation held June 20, 1979, relative to charges as follows: (See Employees' Exhibit "A-2")

"You are being charged with alleged violation of Rule "B" of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employees, Form MP-1 Standard effective March 1, 1957 reading in Part as follows:

Employees who are negligent or indifferent to duty,  
... will not be retained in the service."

That as a result of failure to prove the charges, the Carrier improperly disciplined Machinist R. E. Ritter, therefore, he should be paid all time lost, and the reprimand should be stricken from his record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute involves a 4-day suspension against a machinist for his alleged negligence and indifference to duty for failure to add oil and water to certain locomotive units.

Before discussing the merits of the dispute, a number of objections by the Organization must be considered. One objection of the Organization was that the manner in which the investigation was conducted and transcribed was unfair and inaccurate. This objection seems to be based on the ground that the investigation was recorded in shorthand and later transcribed. We do not see that this violated the Agreement or rendered the investigation inaccurate. No inaccuracies of any significance has been brought to our attention. It is the Carrier's

responsibility to make a transcript of the investigation and furnish a copy to the Organization. The manner in which the investigation is transcribed is for the Carrier to determine.

Exception was also taken to the claimant being required to testify first in the investigation. We have been referred to no rule prohibiting such procedure. It is well established that disciplinary proceedings are not criminal proceedings and that strict rules of evidence do not apply.

There was also objection to claimant's personal record being reviewed. Again we have been cited to no rule prohibiting such procedure, which has been upheld in numerous awards of the Board.

Before the Board there was also complaint made because the same officer preferred the charge, conducted the investigation, and assessed the discipline. We have been referred to no rule stating who will prefer charges, conduct investigations, or assess discipline. At any rate, this procedure has been upheld by so many awards as to require no citation.

The original letter of charge of May 3, 1979, was addressed to the claimant, with copy to the Local Chairman. Subsequent postponements were by Agreement between the Carrier and the Organization. It was the responsibility of the Organization to keep the claimant properly advised of the postponements, as well as his right to have witnesses present.

The charge of May 3, 1979, against the claimant read:

"Please arrange to report to the office of Trainmaster, Armory, Mississippi, at 2:00 P.M., May 14, 1979, for formal investigation to develop the facts, and determine your responsibility, if any, in connection with your failure to add engine lube oil to units 826, 827 and 441, and your failure to add cooling water to unit 720 during your assigned hours, April 28, 1979.

You are being charged with alleged violation of Rule "B" of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employees, Form MP-1 Standard, effective March 1, 1957, reading in part as follows:

'Employees, who are negligent or indifferent to duty ... will not be retained in the service.'

Your personal record will be reviewed in this investigation.

The duly authorized representative of your craft is being given a copy of this letter. You may have representative as provided by agreement rules."

In the investigation, the claimant testified that he left them (the locomotives involved) "Okayed for service".

Engineer Hitt, in charge of train No. 821 on April 29, 1979, stated that he checked the oil on engine 826 and found it to be in proper operating condition. He did have trouble with engine 827 leaving Amory Yard, but after he got it running he checked the oil and found it one-half between the low and full mark.

Based upon the entire record, one would assume that claimant did not properly service the locomotives during his tour of duty. However, discipline, regardless of the amount must be supported by substantial evidence. In this case the Board finds that the Carrier did not present substantial evidence to support the discipline against the claimant.

A W A R D

Claim sustained.

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 9th day of December, 1981.