

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

(International Brotherhood of Electrical Workers
(System Council No. 7
Parties to Dispute: (National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) unjustly suspended Electrician Timothy Prebe fifteen (15) working days, effective January 19, 1981.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Timothy Prebe to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and to expunge 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 employees 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.

Claimant, with about two and one-half years of service, was employed by the Carrier as an electrician at its 16th Street Facility, Chicago, Illinois. On December 8, 1980, claimant was instructed to attend an investigation on the charge:

"Your responsibility for your alleged failure to comply with that portion of the National Railroad Passenger Corporation Rule of Conduct 'H' which reads: 'Employees must take every precaution to guard against loss and damage to the Company property from any cause.' In that on December 1, 1980,

"during your tour of duty you were assigned to hook up the traction motor leads on unit 299 which in fact you did and gave Mr. Noakes the General Foreman the okay for the locomotive to go. Upon Mr. Kuraszek and Mr. Hughes testing the locomotive for out-bound train, it was found to have the #1 traction motor leads wired wrong with the ground lead tied into the A1 traction motor lead, which caused a very extensive electrical flash with minor personal injuries to Mr. Kuraszek and Mr. Hughes."

The charge was amended to refer to Mr. Kovach and Mr. Hughes in each instance rather than to Mr. Kuraszek and Mr. Hughes.

The investigation was conducted on January 7, 1981. A copy of the transcript of the investigation has been made a part of the record. Following the investigation, claimant was assessed a fifteen day suspension, of which five days were stated to be served and ten days held in abeyance for six months. On appeal on the property, the discipline was reduced to a fifteen day deferred suspension.

In the investigation, claimant testified that he was instructed to and did hook up the traction motor leads; that he had performed such work before, and that the work was properly performed in the instant case. Another electrician testified that he saw the claimant properly connect the traction motor leads. Still another electrician testified that he observed the claimant performing the work and at that time the cables were connected properly.

The investigation was rather lengthy. We have reviewed it carefully and it is our considered opinion that the Carrier has not produced the substantial evidence necessary to support disciplinary action against the claimant. It may be an accurate assumption that claimant did not properly perform the work, but discipline must be based on evidence adduced at the investigation - not on assumptions, speculations or conjectures.

We will sustain the claim to the extent of awarding that the fifteen days deferred suspension be expunged from claimant's record.

We do not intend this Award to be taken that we do not share the Carrier's concern about the importance of safety in the railroad industry, but in discipline cases the burden of proof is on the Carrier, and, as stated, we do not find the substantial evidence necessary to support disciplinary action against the claimant.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984