

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly assessed 60 days suspension - previous discipline record considered, effective on or about 15 days from receipt of Notice of Discipline, against Electrician Louis John Longo, Altoona, Pennsylvania, causing him to be held out of service 43 days.
2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician Louis John Longo 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 Electricians' 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 employe 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.

The Claimant held the position of Electrician, Grade C at the Carrier's Juniata Shops in Altoona, Pennsylvania. His service with the Carrier totalled approximately 31 years.

The Claimant was charged with poor and unsafe workmanship resulting in an electrical hazard because he improperly installed a 3 phase 230 volt electrical service to a grinding machine in the Carrier's Machine Shop at Altoona, Pennsylvania on January 16, 1981. By the improper installation, the charge indicated that employees were exposed to possible electrical shock. Following the trial, the Claimant was suspended for 60 days which was reduced to 30 days due to leniency.

It is well established in the field of labor relations that in discipline cases the burden of proving that the employe has committed an offense rests with the employer. See, for example, First Division Award No. 20471. The record warrants the conclusion that the Carrier has failed to satisfy its burden of proof.

The 2 witnesses who testified on behalf of the Carrier were Assistant General Foreman McClellan and Electrical Engineer Kolesar. Both of these witnesses had no personal involvement in the temporary hookup performed by the Claimant on January 16, 1981. After the Claimant had left the area, and completed the temporary installation, Assistant General Foreman McClellan appeared at the grinding machine and complained about the wiring. He said that the wiring was "skinned up but not clear through." He could not answer how deep the wire was cut; he could not provide a measurement for the insulation on the #8 wire; nor did he see the wire. It should be noted that after taking photographs of the machine he ordered the machine dismantled and failed to preserve any of the wiring used by the Claimant. Assistant General Foreman McClellan requested Electrical Engineer Kolesar to look at the installation. However he failed to inform Kolesar that it was a temporary installation which constitutes a critical reference point from which to evaluate the work performed by the Claimant.

In contrast to the Carrier's witnesses, the Organization called both General Foreman Cherry and Gang Foreman Furgione who played major roles in the work performed by the Claimant. General Foreman Cherry wanted a temporary service since he intended to use the grinding machine for a couple of days after which the machine was to be scrapped. As a result, he directed the Claimant to make a temporary connection to the grinding machine. General Foreman Cherry said that he "just wanted it hooked up" so he "could operate it." The Claimant also discussed in detail how he proposed to temporarily wire the machine and General Foreman Cherry approved his plans by saying "alright". The Claimant discussed the job with Gang Foreman Furgione. He acknowledged at the trial that he told the Claimant it was a temporary job. Moreover, he was satisfied during the afternoon of January 16, 1981 that the machine "was running in the right direction." It is of great weight that both General Foreman Cherry and Gang Foreman Furgione had no knowledge of the charges, given their supervisory roles in the temporary installation.

Based on the record, the Board concludes that the Carrier failed to satisfy its evidentiary burden in proving that the Claimant committed the offenses contained in its charges. Accordingly, Claimant shall be reinstated for the period he was held out of service and made whole for those contractual benefits lost during that period.


A W A R D

Claim sustained.

Form 1  
Page 3

Award No. 9941  
Docket No. 9965  
2-CRC-EW-'84

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984