

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, Machinist E. F. Strate was unjustly given a fifteen (15) day deferred suspension on March 5, 1981, by The Norfolk and Western Railway Company.
2. That The Norfolk and Western Railway Company remove the fifteen (15) day deferred suspension from Machinist E. F. Strate's service 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.

On December 18, 1980, the Carrier notified Claimant that he was charged with responsibility for the collision between locomotive 1634 and a jib crane in the Decatur Locomotive Shop on December 8, 1980. As a result of an investigation held on January 6, 1981, Claimant was assessed a fifteen (15) day deferred suspension.

The record in the instant case reveals that Claimant is a 24 year veteran machinist at the Diesel Shop located at Decatur, Illinois. Claimant was assigned the 7:00 a.m. to 3:30 p.m. shift at the time this dispute arose.

On December 8, 1980, at approximately 8:45 a.m., Claimant was riding as "look out" on the west end of Locomotive Unit 1634 as it moved on Track No. 9 through the Locomotive Truck Shop. Claimant's position required that he direct the movement of the locomotive, observe any obstructions in the path of the locomotive's travel, and give the operator a stop signal if necessary. It is undisputed that Unit 1634 collided with the journal box area jib crane, resulting in damage to both pieces of equipment. It is further agreed by the parties that Claimant did not give a stop signal to the operator of the locomotive prior to the collision. Claimant testified that although he observed the track area, he failed to see that the jib crane had fouled the track at any time prior to the accident.

The Organization, on behalf of the Claimant, contends that the jib crane was maintained in such a condition that it could swing of its own accord. Because of this known unsafe condition, the Claimant cannot be held responsible for what the Organization suggests was an unavoidable collision. Moreover, the Organization avers that the Carrier's action in suspending the Claimant was not supported by substantial evidence.

Claimant's safety contentions are an affirmative defense and, as such, the burden of proof is on the Claimant and the Organization. (See Second Division Awards 8390, 7973). In the present case, the necessary proof is lacking unless the Board overturns the credibility determinations of the hearing officer, accepts the Claimant's version of the disputed factual issues and rejects the Carrier's version. Prior awards often note the fact that the Board is neither authorized nor constituted to make such credibility determinations, since issues of credibility must be determined by the trier of fact. (See Third Division Award 21004, Public Law Board No. 1753, Award No. 1). On this record, we have no basis for substituting our judgment for that of the hearing officer, and the safety defense claim must be denied.

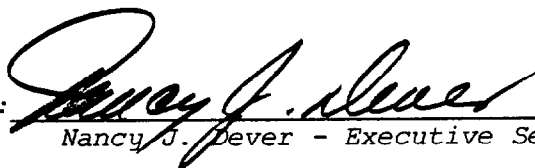
The Board is satisfied that there was substantial and substantive evidence of probative value on the merits. In our judgment, there is no showing of unreasonableness, bias, prejudice or predetermination shown on this record to impeach the determination of the hearing officer that Claimant was not sufficiently observant, and that Claimant's failure in that regard was the direct cause of the collision. We find no grounds upon which we should substitute our judgment for the Carrier's relative to the penalty imposed. We, therefore, deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.