

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers, AFL-CIO
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation (Amtrak) be ordered to compensate Machinist A. Pokorny and otherwise make him whole for all losses as a result of a 30 working day suspension, in accord with the prevailing Agreement dated September 1, 1977, as subsequently amended.

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.

The Claimant is employed as a Machinist at the Carrier's 16th Street facility in Chicago, Illinois. On May 6, 1982 the Claimant was notified that he was to attend an investigation concerning the following:

***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 during your tour of duty on April 24, 1982, you failed to properly inspect (sic) Locomotive 370, which caused the locomotive to be cut out by the Milwaukee Railroad inspectors for the Left #3 wheel being scrap, measuring 15/16 inches, which subsequently caused a 40 minute delay to Train 331."

Following the investigation that was held on May 14, 1982, the Claimant was assessed a suspension of 30 days.

The record discloses that the Claimant failed to properly inspect Locomotive 370 on April 25, 1983. He acknowledged that at the time of his inspection the rim of the L3 wheel exceeded both Amtrak and Federal Railroad Administration's (FRA) minimum requirements. After the inspection, the Unit was dispatched to Chicago Union Station where upon inspection, the Unit was rejected because the L3 wheel was below FRA standards. Since it is unreasonable to infer that the L3 wheel could lose 1/4 inch of metal from its rim during the seven hour period the Unit moved from the 16th Street facility to Chicago Union Station, the Board concludes that the Unit was not properly inspected by the Claimant.

On April 23, 1982 the Claimant reported flat spots on the wheels of Locomotive 370 to his Foreman, William Rossetti, who acknowledged that he was "aware" that "Locomotive 370 had bad wheels". When the Claimant informed Foreman Rossetti about the L3 wheel, he was told that the wheel would be sent to the Wheel Shop "the following day when it came back in and it would be cut***". Relying upon this statement by Foreman Rossetti, the Claimant did not indicate on the appropriate work form the defect in L3 wheel. The Claimant also indicated that he did not note the defect on the work form on April 24 because Foreman Rossetti "knew about the wheels," and that is why he "did not write it down again". Although the Unit was in the Wheel Shop on April 24, Peter Estrada, the Shop Foreman said that the Unit left the Shop "because the Foreman was put in pressure to get that wheel out, to get that engine out".

These events of April 23 and 24 indicate that the Carrier was not completely without fault concerning the loss and damage it sustained on April 25. At the same time, it could be underscored that the Carrier's failure to exercise sufficient due care concerning the defective wheel, despite knowledge of its defect, does not excuse the Claimant's conduct on April 25. He was the last person to perform an inspection of Locomotive 370, and had he satisfactorily performed his job on April 25, and noted the defect on the work form, the Unit would not have left the Carrier's 16th Street facility. However, the Carrier's action on April 23 and 24 constitute mitigating circumstances to warrant a reduction of the discipline received by the Claimant.

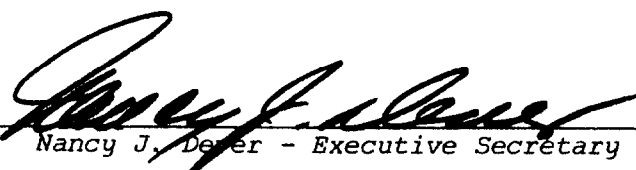
It should be noted that the Claimant has been disciplined on 4 prior occasions. Accordingly, the Board concludes that the Claimant is to be assessed a 20 day disciplinary suspension. He is to be compensated for lost wages for 10 days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 27th day of March 1985.