

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
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Carrier improperly suspended Machinist R. F. Schoenfeld (hereinafter referred to as Claimant) on April 19, 1982, and improperly dismissed him on May 10, 1982.
2. That the Carrier be ordered to restore Claimant to service with compensation for all wage loss resulting from improper suspension and dismissal.
3. That Carrier violated Rule 37 when it deprived Claimant of a fair hearing.

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 had been employed by the Carrier as a Machinist since April 12, 1962. As a result of an investigation that was held on April 28, 1982, the Claimant was dismissed from service, effective May 10, 1982 for leaving unit 3581 unattended while it was in a self-load 8th run operation and for failing to provide Blue Flag protection in violation of the applicable General Rules and Regulations of the Carrier.

On April 19, 1982 the Claimant was employed at the Carrier's Diesel Shop in Salt Lake, Utah. During his shift the Claimant was assigned by Foreman Meyer to load test unit 3581 for one hour, after which he was to shut it down. The assignment was prompted by a report that the unit had a fuel leak. It should be noted that self-loading a unit is a procedure by which the unit is checked while under power to ascertain that it is functioning properly. A unit in self-load is operating as if it were on line as part of a locomotive consist. The

Claimant was also instructed to check the primary filters to determine if they were dirty. While the unit was in self-load, Maintenance Supervisor Denkers approached the unit to determine its status with regard to the fuel leak. He did not find the Claimant on the unit or in the vicinity of the unit; nor was a Blue Flag attached to the unit. Supervisor Denkers promptly informed Foreman Meyer that the unit was unattended and was without proper Blue Flag protection.

The Claimant admitted that on April 19 he left unit 3581 unattended while it was in self-load and without proper Blue Flag Protection. Leaving a unit unattended while in self-load can result in costly repairs in the event of a malfunction as well as serious injury to persons within the vicinity of the unit who are unaware that no one is on the unit. A Blue Flag attached to the unit is required in order to prevent injury to other employees who may be working on or near the unit, and to protect the unit from being coupled and pulled into other units. The Claimant acknowledged that he fully understood the Rules that the Carrier alleged he had violated. Rules establish a code of conduct for the future so that damage and injury to property and person can be avoided; it is irrelevant that no damage or injury in fact resulted from the Claimant's violations of the Rules. Furthermore, the failure to comply with the Rules governing self-load of a unit and Blue Flag Protection, is a matter of serious concern to the Carrier inasmuch as it involves the factor of safety to the Carrier's personnel, the Claimant, and creates an undue risk to the Carrier's operations.

The record does not warrant the conclusion that Supervisor Denkers and Foreman Meyer were also guilty of rule infractions when they did not shut down unit 3581 after it was discovered in self-load. A prompt inquiry into the matter was made to determine why the unit was left unattended and without Blue Flag Protection. Supervisor Denkers was uncertain as to the status of unit 3581 and Foreman Meyer was proceeding to the unit to shut it down. To assert that Supervisor Denkers and Foreman Meyer are as culpable as the Claimant, is to confuse the proper discharge of supervisory responsibilities with the failure of the Claimant to comply with Rules designed to avoid damage and injury to property and person.

The Claimant's record includes dismissal from service on four (4) prior occasions as well as the assessment of several other disciplinary actions. In light of the Claimant's violations of the Carrier's Rules on April 19, 1982 and his unsatisfactory past record, the Board concludes that the Carrier's dismissal of the Claimant should not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985