

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Southern Pacific Transportation Company
(Eastern)

Dispute: Claim of Employees:

Claim in behalf of Machinist C. H. Rabe for eight (8) hours pay per day at the pro rata rate commencing with his regular tour of duty July 10, 1982 and extending through July 14, 1982 plus any overtime for which he would have been available had he not been arbitrarily and capriciously removed from his assignment contrary to and in violation of the controlling agreement.

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 employes involved in this dispute are respectively carrier and employes 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 was employed as a Machinist with twenty-three (23) years of service at the Carrier's Locomotive Maintenance plant in San Antonio, Texas, when he was notified on April 20, 1982 of the following charges:^{1/}

You are hereby charged with indifference to the performance of duty during your tour of duty April 6, 1982 in regards to your failure to complete the work assigned to you on unit 9395 on that day which may be in violation of Rule 802, first paragraph, of the Rules & Regulations Governing Mechanical Department Employees, Revised April 1, 1978, of the Southern Pacific Transportation Co.

* * *

^{1/} Claimant was also charged with an act of insubordination on April 7, 1982. Claimant was found not guilty of insubordination, and as this charge has no factual relationship to the remaining charges, it shall not be considered or addressed in this award.

Also, you are charged with misconduct, willful disregard and negligence affecting the interest of the Company; indifference to the performance of duty; and failure to remain at your post of duty and devote yourself exclusively to your duties while on your tour of duty on April 16, 1982 when you and Machinist, C. H. Berger III were assigned to remove and replace #12 assembly on SP 1334 which may be in violation of the second paragraph of Rule 801, first paragraph of Rule 802, and the first paragraph of Rule 810 of the Rules & Regulations governing Mechanical Department Employees, revised April 1, 1978, of the Southern Pacific Transportation Company.

Rule 801 states in part:

...Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported....

Rule 802 provides in pertinent part:

Indifference to duty, or to the performance of duty, will not be condoned....

and Rule 810 states in part:

Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority....

On April 6, 1982, Claimant's Supervisor assigned Claimant various tasks on engine 9395, specifically: "to change the Michiana filters, turbo oil filters, apply the air box covers, and a few crankcase covers that were off, apply engine oil, and start and work the trip on it." The Supervisor testified that Claimant was assigned the aforementioned tasks between 7:00 and 7:25 a.m., and he estimated the time necessary to complete the job at approximately five (5) hours. The Supervisor stated Claimant was indifferent to his duties in violation of Rule 802 as demonstrated by the failure to complete the assigned task by the end of the shift, coupled with the number of times Claimant was found away from his job in conversation with fellow employees.

The Claimant admitted that he received the assignment at approximately 7:10 a.m. He stated that he had applied the oil sometime prior to his lunch period, but that for safety reasons he shut the oil off during the lunch period. Claimant admitted that he was away from his assigned area engaged in conversation with other employees during the application of oil, but only to use the rest room or to get a drink of water.

The evidence is undisputed that the oil system in place at the Carrier's San Antonio shop was insufficient to meet the needs of the incoming locomotive traffic. The slow oil flow rate was a problem of longstanding on the property. This Board finds upon close examination of all the evidence that the oil flow rate on April 6, 1982 appeared to be at the usual and customary slow flow rate for the shop. A flow rate test was performed by the water service mechanic two weeks after the incident on April 6, 1982. This test, while potentially relevant, is outweighed by the danger of unfair prejudice due to the absence of controls, i.e., an inability to control for discrepancies in receptacle position, oil temperature and the oil level in the holding tank. The flow rate test performed by the water service mechanic was of little probative value and an unreliable source for assessment of the actual flow rate on April 6, 1982.

The Board finds that the evidence shows Claimant to have been considered by the Carrier's witnesses as possessing superior technical skills. The evidence sustains a finding that the task assigned Claimant should have been completed in less than five (5) hours barring any unforeseen and unusual circumstances, and taking into account the normal oil flow rate on the property. The General Foreman testified that depending on the condition of the oil which was to be applied, the same job assigned Claimant would take between one and one-half to three hours. Claimant's testimony was vague, if not evasive, on the length of time an employee with twenty-three years of experience would require to complete the assignment. The Claimant testified as follows:

Q. Mr. Rabe, with the exception of the length of time to add the oil, to the crankcase to unit 9395 how long would you expect yourself to take to complete the task assigned?

A. I have no idea how long a task of this sort would take pertaining to other engines and mechanics involved.

* * *

Q. How long does it take you, Mr. Rabe to inspect a crankcase on a 20 cylinder EMD engine in line with your 23 years of experience of doing that?

A. With no reported problem in this crankcase I observed in the length of time applying the covers I was not aware why the oil was drained.

Q. Mr. Rabe, what would you estimate the rate of oil flow into the 9395 to have been on April 6, 1982?

A. I have no idea of how much or what volume that oil was coming out of that hose and to this day, other than the testimony before me I am still shy on the amount of oil that can be applied in a length of time.

The Organization's position that the Claimant only performed the tasks in the order that they were assigned, and therefore, Claimant was without fault when he failed to complete the assignment is too narrow an interpretation of the Claimant's duties. Claimant's assignment was to prepare engine 9395 for use, and to do so within the usual and customary time required. The usual and customary time included as only one factor the slow oil flow rate at Carrier's Locomotive Maintenance Plant in San Antonio, Texas. The general assignment given Claimant contained a number of specific procedures with which the Claimant was familiar, and he was considered to be superior in their execution compared to other employees. Claimant knew, or should have known, that application of oil in the sequence he selected would result in the failure to timely complete the service of engine 9395. The Carrier has met its burden of proof on the charge of indifference to duty.

A comparison of the record in this proceeding with the record developed in Award No. 9988 reveals no substantive differences of fact. On the charged violation of Rules 801, 802 and 810 by Claimant on April 16, 1982, the Board denies the claim based upon its opinion and rationale set forth in Award No. 9988, and Claimant's behavior in performance of his assigned task on that date. A review of the instant record is conclusive that the Carrier met its burden of proof on both charges, and that the five day suspension was neither arbitrary, excessive nor capricious.

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 11th day of September 1985.