

*The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.*

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

*Dispute: Claim of Employees:*

- 1. That the Carrier improperly dismissed Machinist P. A. Myers (hereinafter referred to as Claimant) from service on February 4, 1983.*
- 2. That Claimant has since been reinstated to service without prejudice to the claim for compensation.*
- 3. That, accordingly, the Carrier be ordered to compensate Claimant for all wage loss from date of dismissal to date Claimant was restored to service.*

*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.*

*Claimant, Machinist P. A. Myers, has been in the service of the Carrier since January 21, 1976, at its Roseville, California, Diesel Shop.*

*On November 1, 1982, the Claimant was required to take lead readings on each piston in the locomotive unit by inserting lead in holders on top of each piston in the engine and compressing it against the head of the engine. The Claimant was also assigned to "land" readings, which measure the piston ring side clearance on each piston.*

*Quality Control Supervisor J. L. Stowell believed that the Claimant did not perform the above-mentioned tests on the locomotive, as he observed the Claimant make a copy of an old data sheet on the afternoon of November 1, 1982. Thereafter, the Quality Control Supervisor observed the Claimant working and saw that the Claimant did not perform the lead-to-piston clearances and piston ring groove wear step measurements, although the Claimant signed the work sheet as having performed the work.*

The Claimant was cited for a formal hearing in connection with his alleged falsification of data.

The Carrier charged the Claimant with a violation of Rule 802. Following a formal hearing, the Claimant was dismissed from service on February 4, 1982, for alleged violation of Rule 802, which states:

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

The Organization's position is that the transcript does not support the Carrier's allegation that the Claimant was indifferent to duty. The Organization argues that the Claimant did not copy readings from the unit file and that he took the readings prior to the time Stowell began observing him.

The Organization also contends that the Carrier violated Rule 38(b) of the agreement by failing to respond to the appeal of the Claimant's dismissal until sixty-three days had expired. Rule 38(b) reads in pertinent part:

"A claim or grievance may be presented in writing by the duly authorized committee to the master mechanic (to shop superintendent in General Shops), provided said written claim or grievance is presented within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim shall be allowed as presented..."

The Organization contends that the Rule is clear and that any Claim not disallowed within sixty days shall be granted.

The Carrier's position is that the Claimant violated Rule 802 of the Carrier's General Rules and Regulations by not performing the work for which he attested to on November 1, 1982. The Carrier submits that Control Supervisor Stowell observed the Claimant the entire time he was removing and replacing the air box covers during the time he should have made other proper inspections but did not do so. Moreover, the Carrier points out that the Claimant was confronted by another Supervisor who stated that he did perform the function. Later, after being confronted by the observations of Supervisor Stowell, the Claimant changed his story and told his Supervisors that he did not take the lead readings, but he did take the "land readings." Moreover, the Carrier had two machinists take the readings, and those readings turned out to be far different from the readings alleged to be taken by the Claimant. Hence, argues the Carrier, it is clear that the Claimant did not perform the function that he was required to do, even though he signed the paperwork stating that he had.

With respect to the procedural issue, the Carrier argues that even though the Claim is dated February 16, 1983, the Carrier did not receive the letter until February 18, 1983, and therefore its response was made within sixty days of the date received. Moreover, argues the Carrier, there has been no showing that the Claimant was prejudiced in any manner by the date of the response.

This Board has reviewed the testimony and other evidence in the record in this case, and it finds that the date that the appeal is received by the Carrier constitutes the filing of the appeal under Rule 38(b) for the purpose of triggering the sixty-day period for the purpose of responding to the appeal. In a recent case involving the same Carrier and Organization, this Board held that the response is due within sixty days from the date received. (See Awards 10145; 8833; and 8268.) Hence, the response of the Carrier was not late and does not require sustaining the Claim.

Moreover, the evidence is clear that the Claimant submitted a signed form stating that he had taken readings which he had not. He admitted to some of the wrongdoing, and the Carrier has submitted several witnesses to substantiate further wrongdoing by the Claimant. Even though there is some conflict in the testimony, this Board had held, on numerous occasions, that it will not substitute its judgment for that of the Hearing Officer. (See Second Division Awards 9905, 9866, 9864, 9846.)

Hence, we find that the Carrier had a legitimate reason to find the Claimant in violation of the Rule with which he was charged.

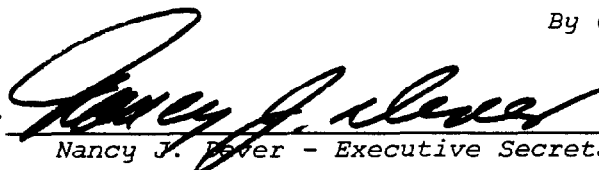
And so far as the level of discipline is concerned, the Claimant was originally dismissed following the investigation and was later reinstated to service on August 17, 1983, after serving a six-month suspension. This Board has held, on numerous occasions, that we will not second-guess a Carrier in the imposition of discipline unless said discipline is unreasonable, arbitrary, or capricious. In this case, we see no reason to set aside the discipline issued to the Claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.