Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10837
SECOND DIVISION Docket No. 10936
2-SLSW-MA-'86

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

Claim in behalf of Machinists A. L. Bradley and J. L. Marshall due to Carrier's violation of Rule 24-1 wherein they assessed five days actual suspension account alleged violation of Carrier's Rule 802. Claim is made to restore all lost wages, credit for vacation qualifying days lost, and all other benefits lost due to these suspensions.

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.

A Federal Locomotive Inspector had inspected and found a locomotive wheel to have a flange worn below the Federal acceptable limit. He made this inspection on December 7, 1983 in East St. Louis, Illinois. A Carrier Quality Control Inspector examined the wheel on the same day and concurred in the Federal Inspector's findings. Subsequently two Carrier Machinists, Claimant Bradley and Claimant Marshall were charged with:

> "You are hereby notified to be present for a formal investigation. . . to develop facts and place responsibility, if any, on the charge that you violated Rule 802 of the 'Rules and Regulations. . .' It being alleged that you failed to detect worn flanges on R #4 wheel on SP unit 8250 while performing your duties as locomotive inspectors on November 27, 1983, [Claimant Bradley] and November 30, 1983, [Claimant Marshall], respectively."

Based on the evidence from the Investigation, the Investigating Officer found that the charges had been proved and assessed each Claimant a five day suspension.

The only evidence presented by the Carrier relevant to the Claimants was evidence that the wheels had not met the Federal test on December 7, 1983 in East St. Louis, Illinois. Claimant Bradley testified that he had inspected the wheels of the Locomotive in question on November 27, 1983 at Pine Bluff, Arkansas. He testified that the wheel was in "wheel attention" and that he examined and measured it with care and found that it had not fallen below the applicable limit set to notify the Carrier. He testified that he had used a "no-go" gauge which is a fixed gauge that will either fit over the flange or will not. The gauge would not fit over the flange. He also testified that he had examined it with a "finger gauge". This is a caliber gauge that can be adjusted for an exact fit over the flange. Neither gauge showed a fatal defect. A Carrier supervisor testified that Claimant Bradley usually called to his attention any flange that was becoming close to the critical point. He further testified that Claimant did not perform his duties in an indifferent manner.

Claimant Marshall testified that he had checked the wheel with both kinds of gauges and had not found it to be critical. He did, however, write up the wheel on a discrepancy report indicating that the flange was becoming thin. Claimant also testified that the wheel was in "wheel attention". A Mechanical Foreman testified:

> "Q. When Mr. Marshall reports a thin flange or worn flange to you have you generally been able to depend upon what he has told you?
>
> A. Mr. Marshall is a very qualified machinist and numerous occasions had found dead wheels, wheels that were close to being dead and without exception I have always found him to be accurate in his description of the wheels.
>
> Q. On 11/30/83 would you have called his attitude or the manner in which he performed his duties as being indifferent?
>
> A. No sir. Quite the contrary. On this particular wheel he took the time to borrow a scale and double check himself."

As is the situation in any disciplinary Investigation, the burden of proof rests squarely on the Carrier. We find that the evidence in this record does not support the finding of guilt. The only evidence presented by the Carrier is that the two Machinists had inspected the wheel ten days and seven days respectively before it was inspected in East St. Louis, Illinois. It had been inspected by the two Claimants at Pine Bluff, Arkansas, a distance from East St. Louis of three hundred and seventy five miles.

Carrier supervision had attested to the conscientiousness of the Claimants. The direct evidence in the form of testimony of the Claimants and the Carrier supervision overcomes the circumstantial evidence of the Carrier. The intervening causes of the time and distance factors weaken any inferences to be drawn from the circumstantial evidence.

We will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1986.