

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

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

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) violated Rule 24 but not limited thereto of the Controlling Agreement when they dismissed Machinist M. Badzmierowski account of alleged violations of Carrier Rules of Conduct "A", "F", "H", "I", and "Y". Claim is made to restore claimant to service, and compensate him for all pay lost up to the time of his restoration to service at the prevailing Machinists rate of pay.

2. That Machinist Badzmierowski be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost in this period and otherwise made whole for all losses in accord with the prevailing agreement dated September 1, 1977, 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 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 was a Machinist in the employ of Carrier on December 7, 1983, when his conduct on that date led to an Investigation in which he was charged with:

"Your responsibility for your alleged failure to comply with that portion of the National Railroad Passenger Corporation Rule of Conduct "A" and "F" and "H" and "I" and "Y".

Rule "A" states: Employees must render every assistance in carrying out the rules and special instructions and must promptly report to their supervisor any violation thereof.

Rule "F" states: Safety is of first importance in the discharge of duty and in cases of doubt or uncertainty, the safe course must be taken. Employees shall comply with safety regulations and must exercise care to prevent injury to themselves or others. Employees will not be retained in the service who are careless of the safety of themselves or others.

Rule "H" states: Employees must take every precaution to guard against loss and damage to the company property from any cause.

Rule "I" states: Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or who do not conduct themselves in such a manner that the company will not be subjected to criticism or loss of good will.

Rule "Y" states: Employees must obey instructions from their supervisor in matters pertaining to their respective branch of the service and employees whose duties require them to conform with instructions issued by various departments must familiarize themselves therewith and be governed thereby.

. . . in that during your tour of duty on December 7, 1983, you signed work reports to the effect that you had checked the traction motor suspension bearings for water on locomotives 305, 310, 330 and 375, signed work reports indicating no water was present when in fact water was present in certain traction motors and particular locations thereon."

As a result of the evidence adduced at the Investigation, the Investigating Officer found that the charges had been proved and based on this and Claimant's prior disciplinary record, dismissed him from service effective January 18, 1984. Claimant was reinstated on a leniency basis on April 13, 1984. This Claim is for pay and benefits lost between the date of discharge and the date of reinstatement.

On December 8, 1983 some five Carrier employees were involved in the final inspection of the locomotives for Trains 5 and 7, scheduled to depart Chicago on that date. Their uncontroverted testimony is that water was found in the oil wells of these locomotives. Their additional testimony was that the plugs used to drain and check the oil in the wells had grease and dirt around their perimeter, indicating that they had not been recently touched with a wrench. One witness testified that he had observed one plug having to be removed with a 14-inch pipe wrench. It was suggested that the force generated by the wrench would have not been necessary if the plug had been loosened the day before.

Claimant testified that he had diligently checked the wells on the preceding day and had observed no water therein. It was established that the weather was cold and that ice and snow would accumulate on the engines and could eventually result in water running into the wells.

The evidence, except for the denial of malfeasance by the Claimant, was all inferential. The inference of the Carrier's evidence is that it is unlikely that water would seep into and accumulate in the wells from one day to the next. Also the evidence infers that placement of a wrench on the plugs would result in the removal of grime and dirt from the perimeter of the plug. The inference presented by the Claimant is that the snowy conditions made it likely that water seeped into the wells.

Much of the evidence in most Investigations is inferential and decision makers frequently make judgments based on inferences. Only when an intervening cause greatly weakens the conclusions drawn from inferences should the judgment of the decision maker be disturbed. If there had been a lengthy interval of time between the inspection of Claimant and the discovery of the water, it would be difficult to sustain the inference that his neglect was the cause of the condition. However, in this case there was a very short period of time. The same conclusion can be drawn by the condition of the plugs. We find that the Investigating Officer was justified in concluding that the wells had not been recently inspected.

Failure to remove water from traction motor suspension bearings is a serious offense. In the extreme, such failure can lead to a restriction of lubrication to the bearing which can cause overheating of the bearing and could eventually result in a derailment of the locomotive. The Carrier was justified in treating the offense as a serious matter. We think it correctly corrected its assessment of the penalty of dismissal. The time out of service served by the Claimant was sufficient penalty for the offense.

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 30th day of April 1986.