

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. Claim in behalf of Machinist A. T. Knight for eight hours per day at the pro rata rate for each day lost as a result of discipline assessed as actual suspension commencing February 14, 1984 through March 13, 1984. For all overtime for which he would have been available at the punitive rate had the Carrier not assessed this unwarranted discipline. And holiday pay for President's Day, February 20, 1984.

2. Credit for vacation qualification lost during this period.

3. Four hours pay at the pro rata rate for being required to attend the investigation until 4:15 PM, February 8, 1984.

4. Reimburse the Railroad Retirement Board all unemployment benefits paid to Machinist A. T. Knight during the period, as damages, in connection with the discipline.

5. The removal of all material pertaining to this incident from his personal record file. This, in accordance with the provisions of the controlling Agreement, as amended, Rules 32 and 4, but not limited thereto and for violation of the Agreement as noted, last paragraph of the original claim.

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 Carrier maintains a diesel repair facility at Little Rock, Arkansas, at which Machinists as well as other Crafts are employed.

On date of December 20, 1983, Claimant worked with another Machinist, Mr. R. D. Davis until about 1:30 P.M. at which time Machinist Davis went home and was replaced by Machinist F. D. Boerner, who worked with Claimant until the close of the shift. The work that day consisted of "applying assemblies" which is a bearing type device in two pieces which clamps the connecting rod to the crankshaft. It is referred to as a "basket." The two parts are machined to fit each other and the connecting rod. None can be interchanged. Sometime during the shift the "basket" belonging on Number 11 rod was used on Number 14 rod and vice versa. This resulted in quite extensive damage to the engine and apparently ruined the crankshaft.

On date of January 6, 1984, Carrier sent the following to the Claimant and to Machinist Davis:

"Report to the office of Shop Superintendent, 8th and Pike Avenue, North Little Rock, Arkansas, at 9:00 a.m., Thursday, January 12, 1984, for formal investigation to develop the facts and place your responsibility, if any, for allegedly misapplying #14 rod basket while working as a Machinist on December 20, 1983, first shift, Pike Avenue Annual House, resulting in failure of #6 and 14 assemblies and subsequent damage to crankshaft of Unit 6014."

At the request of the Organization the Investigation was postponed and held on February 8, 1984. On February 13, 1984 Carrier notified Claimant as follows:

"You are hereby advised that your record has this date been assessed with 30 days actual suspension due to your participation in misapplying #14 rod basket while working as Machinist on December 20, 1983, which resulted in failure of #14 assembly and damage to the crankshaft of Unit 6014. Your record now stands 30 days actual until 1159 pm March 13-1984."

At the same time Machinist Davis was advised that he was assessed a ten day deferred suspension.

After considering all of the claims and contentions made in this case we feel that while there can be no doubt that someone, and it may have been more than one person, made a rather serious error on December 20, 1983, it is not at all clear who made that error.

We are also concerned over the difference in the penalty assessed the Claimant as compared to the other Machinist; thirty days actual suspension for one and ten days deferred suspension for the other. Carrier attempts to justify this difference in their Submission by arguing that the number on the connecting rod was visible from the Claimant's side but not from Machinist Davis' side. This may well be, but Carrier presents no substantiation for this connection. Further, this contention is made in Carrier's Submission. Never does it show up during handling of the Claim on the property. It is well settled that contentions not brought up on the property cannot be considered later.

Also we note the following transcript testimony of Claimant.

"Q Would you please explain the procedure you use on the date in question in applying power assemblies to Unit 6014?

"A Barred engine over and spotted crankshaft throw. We applied four assemblies. We took the basket halves and layed (sic) them to the correct position. After we applied the assemblies, we applied baskets; I was on the right side of the engine and R. D. Davis was on the other side. We proceeded to apply bearings and torque baskets.

"Q From the right side of the engine, could you observe the serial number on the fork rod when applying your half of the basket?

"A No

"Q How did you know the basket serial number you were applying matched the serial number on the fork rod?

"A Because R. D. Davis and Frank Boerner called numbers through crankcase to me."

Thus Claimant did, on the property, deny that he could see the serial number on the fork rod from the right hand side of the Unit, and until Carrier's Submission it has not contended otherwise.

In addition, Machinist Davis testified:

"Q On December 20, 1983, can you state for the record what you did complete on Unit 6014 before leaving at 1:30?

"A Mr. Knight and myself did apply several assemblies and we did hang the baskets properly.

"Q How can you testify to the fact that you applied the baskets properly when you say you do not know which power assemblies you applied?

"A I have a definite routine when applying baskets I always follow. I work the ground, Mr. Knight stayed up on the engine. When I attach the crane to the assembly, picked it up out of the rack, then I would apply deck ring to the assembly, pick up both halves of the basket, compare the numbers to the rod, position the crane. Once the crane is positioned over the hole it would be applied to, then and only then do I sit my half of the basket in front of that hole and hand the other half to the man I am working with to be carried around to the opposite side. One step at a time so there will be no mixups."

From this transcript testimony it appears that Machinist Davis picked out both sides of this "basket" putting one side up himself and handing the other side to the Claimant.

Considering all the evidence presented in this case, we cannot find the Claimant any more at fault than Machinist Davis and he may have been much less so. We will therefore reduce the penalty to a ten day deferred suspension, exactly the same as that which Carrier assessed Machinist Davis.


In making this Award we wish to make it clear that this does not include any payments for overtime that Claimant might have worked had he not been suspended, and it does not include any payments to the Railroad Retirement Board for any unemployment benefits paid the Claimant during this suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 1st day of October 1986.