

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Association of Machinists and Aerospace
(Workers
Parties to Dispute: (
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation (Conrail), hereinafter referred to as the Carrier, be ordered to restore Machinist L. Bungart to service and compensate him for all pay lost up to time of restoration to service at the prevailing machinists rate of pay.

2. That Machinist Bungart, 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 May 1, 1979, 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.

As a result of an accident on December 11, 1985, Claimant, an employee for approximately 30 years, was withheld from service and ultimately dismissed by letter dated January 3, 1986, after Hearing on December 20 and 21, 1985, for failure to properly control a ballast regulator.

Initially we reject the Organization's argument that Claimant was not afforded a fair and impartial Investigation by virtue of the Carrier's questioning Claimant during the Investigation concerning certain Safety Rules when those Rules were not specifically mentioned in the Notice of Investigation and

the fact that during the Investigation, a drawing of the accident scene and operational tests on the ballast regulator were introduced. With respect to the Safety Rules issue, we find that the Notice of Investigation was sufficiently precise to apprise Claimant of the charges against him and to permit Claimant to prepare a defense to those allegations. Moreover, we find nothing in the record to indicate that Claimant was surprised by those questions to the extent that Claimant was prejudiced by the mere asking of those questions. Third Division Awards 26276; 19396. With respect to the issue concerning the introduction of certain evidence at the Hearing, we do not view that as an issue going to the fairness of the Hearing, but rather we see that particular evidence as facts to be considered in whether or not substantial evidence existed in the record to support the Carrier's actions.


With respect to the merits of the Claim, we find substantial evidence in the record to support the Carrier's decision to impose discipline in that Claimant did not properly operate the ballast regulator when it collided with the Hy-Rail vehicle driven by Carrier's Supervisor. However, under the circumstances of this case, we believe that dismissal was excessive, particularly in light of the fact that the Supervisor contributed to the accident to a great degree by unexpectedly stopping his vehicle without communication to Claimant. Thus, under the unique circumstances of this case, we shall award that Claimant be returned to service with seniority unimpaired but without compensation for time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1987.