

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12589  
Docket No. 12547  
93-2-92-2-70

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and  
(Aerospace Workers  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:"DISPUTE AND CLAIM OF EMPLOYEES:

- (1) That the Norfolk & Western Railway Company violated the controlling Agreement, when they unjustly suspended Machinist J. W. Short, Roanoke, VA., from service without pay for five (5) actual days.
- (2) That accordingly, the Norfolk & Western Railway Company be ordered to pay Machinist J. W. Short for all lost time wages, with all rights unimpaired and clear his record of the charges."

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 employe 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.

Subsequent to an investigation, the Carrier determined that the Claimant's negligence on the job resulted in his injury. Specifically, the Claimant operated an electro-hydraulic machine ("bar-over machine") which engages the flywheel of a locomotive engine and turns it over so that the crankcase and airbox on EMD equipment can be inspected. After its investigation, the Carrier

found that the bar-over machine, while running, became disengaged from the locomotive flywheel. When the Claimant attempted to re-engage the bar-over machine by reaching into the engagement area, the piston made its strike and the Claimant's fingers were pinched, requiring six stitches.

The Organization's main point in defense of the Claimant was that the Claimant, a long-time employee of some twenty-two years, had adjusted the equipment many times while in operation without injury. It contends that, while the potential for injury would have been less with the machine turned off, that in and of itself did not cause the injury. It submits that the injury occurred because the alignment rod became loose.

There is no evidence that the alignment rod was or was not loose. It is apparent, however, by the Claimant's testimony that, had he turned the bar-over machine off before reaching into the engagement area, he would not have been injured. While we recognize that the Claimant may have adjusted his equipment in the past while under power without incident, that in itself does not mean he acted in a safe manner. However, there is a degree of mitigation and, under all the circumstances and noting that the Claimant has had some twenty-two (22) years of apparently discipline-free service, a five (5) day suspension is unduly harsh. The claim is sustained to the extent that it is reduced to a two (2) day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.