

**CORRECTED**

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 12696  
Docket No. 12695  
94-2-93-2-49**

The Second Division consisted of the regular members and in addition Referee John F. Hennecke when award was rendered.

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

**STATEMENT OF CLAIM:**

- "1. That the Norfolk & Western Railway Company, violated the controlling Agreement, and was arbitrary and capricious when they unjustly assessed Machinist W. K. Lackey a five day deferred suspension on July 25, 1991.
2. That accordingly, the Norfolk & Western Railway Company be ordered to clear Machinist Lackey's record of the charges and any reference to the five day deferred suspension."

**FINDINGS:**

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 has been employed by Carrier since June 19, 1989. After completing training at McDonough, Georgia, Claimant was assigned as a Machinist Apprentice at Carrier's Shaffers Crossing Locomotive Shop. On February 7, 1991, Claimant was promoted to the status of Upgraded (Apprentice) Machinist, the position he held at the time this incident occurred.

On June 15, 1991, Locomotive Unit No. 8698, while moving through the test line, was found to have high flange wheels.

On June 16, during his tour of duty on the second shift, Claimant was assigned the task of truing the wheels on this unit. This work included removing the journal box cap, turning the wheels, replacing the journal box cap and then signing the check sheet to signify that the work had been properly performed and was complete. Claimant completed and signed off on the work on the No. 1 and No. 2 wheels on Unit No. 8698, before completing his tour of duty on June 16. The remaining work on the unit was completed on the third shift and the unit was released for service at approximately 2:30 A.M. on June 17. On June 18, after completing one round trip to a customer's facility, Unit No. 8698 was given a routine inspection by the Engineer upon his return to Roanoke. The engineer noticed that the right No. 1 journal box did not appear as it should. A supervisor from Shaffers Crossing was called to inspect the journal box and found only one of six necessary bolts still in place. A crew was called to replace the missing bolts and to fill the journal with oil, but the oil ran out of the back of the journal box. After Unit No. 8698 was taken back to the shop for a more thorough inspection, it was found that lateral motion, caused by the missing bolts, had allowed the axle to run up into the box, causing damage to the rollers and the seal, which allowed the oil to run out. As a result, the traction motor and the journal box had to be replaced.

On June 19, 1991, Claimant, along with another Machinist, was set a notice to report to the Conference Room at Shaffers Crossing Locomotive Shop on July 2, 1991:

"...for a Formal Investigation (Hearing) to determine your responsibility, if any, in connection with improper performance of duties during your work shift on June 16, 1991, in that Unit 8698 was found on June 18, 1991, at Roanoke, VA, with the right #1 journal box cap improperly applied which caused the right #1 journal box to fail."

The Investigation was held as scheduled and on July 25, 1991, Claimant was notified that he was being assessed a five-day deferred suspension. The Organization timely appealed Carrier's decision, the dispute was progressed between the parties in the proper manner without resolution, and it now comes before this Board.

The Organization argues that the discipline assessed should be set aside because Carrier failed to meet its burden of proof that Claimant did not properly perform his duties or violated any Rules of the current Agreement.

Carrier, on the other hand, contends that there was sufficient testimony and evidence entered into the Investigation to prove that Claimant failed to properly install a journal box cap on June 16, 1991. While no one personally witnessed Claimant attaching the journal box to the wheel, the circumstantial evidence supports Carrier's findings. Carrier submits that this Board has upheld discipline based upon circumstantial evidence (see Second Division Award 12140, Third Division Award 26904, and Fourth Division Award 4526).

After a thorough review of the record of the Investigation, the Board finds that there was sufficient testimony and evidence presented during the hearing to sustain Carrier's charges. While the Board recognizes that much of the evidence is circumstantial, the fact that Unit No. 8698 had completed only one round trip (approximately 210 miles) following Claimant's work on the No. 1 wheel and the nature and extent of the damage which was discovered the day after the unit was returned to service tends to support Carrier's conclusion that Claimant failed to properly install the journal box cap. However, the Board finds that, based upon Claimant's clear record and the nature of the circumstances involved herein, the discipline assessed Claimant should be reduced to a written reprimand.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 4th day of May 1994.