

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12846
Docket No. 12741
95-2-93-2-123

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. The Burlington Northern Railroad violated the controlling agreement, specifically Rule 35, when it unjustly and improperly censured Machinist Adolph Norris, Chicago, Illinois.
2. Accordingly, the Burlington Northern Railroad remove the censure placed upon Machinist Norris's personal record."

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.

By letter of August 7, 1992, Claimant was notified to attend an Investigation to determine his responsibility, if any, for failure to properly perform top deck cover inspections on Locomotive Metra 112. Following the Investigation held on August 18, 1992, the Claimant was notified that he had been found in violation of General Rule 570 for failure to be attentive to duty and was being censured by entry to his personal record.

In support of the Claimant the Organization has raised several arguments on the property. It considers the discipline unjust on both procedural grounds and on merits. Procedurally, the Organization notes that Rule 570 was never mentioned in the notice of Investigation. Additionally, the Claimant did not receive a fair and impartial Investigation as required by Agreement Rule 35. On merits, the Organization argues that the facts prove that the Claimant did not inspect Locomotive Metra 112 on the date in question. The Organization points to testimony that the Claimant was in the washroom when the engine left the yard and to the Locomotive Departure and Trip Maintenance form which sometimes carries the signatures of the inspector's name signed by other employees who did the work. It argues that the Carrier gave credibility to speculative comments of witnesses when facts demonstrate otherwise and support the Claimant's testimony that he did not inspect the Locomotive.

The Carrier argued that there were no procedural violations of the Claimant's rights to a proper Investigation. The Carrier further maintains that on merits there is ample proof of the Claimant's guilt. The Carrier points out that the Claimant was assigned to Locomotive Metra 112, that the top deck lids were not replaced allowing oil to run down the unit and that upon discovery, the Claimant admitted to his immediate Supervisor that he was responsible. The Carrier considers the Organization's reliance upon signatures and Claimant's belated testimony as inconsistent with earlier admissions of guilt. The Carrier finds its position supported by the evidence and its discipline lenient considering the dangerous consequences that could have resulted from the oil leak.

In the record of the Investigation and Notice, the Board has reviewed the Organization's procedural arguments. They are denied for lack of evidence. The Notice is not deemed prejudicial. The Board does not find the Hearing Officers conduct during the Investigation or recess as violative of Rule 35. The Board holds that Claimant received his full contractual rights to a fair and impartial procedure.

In view of the testimony, the Board finds substantial probative evidence to support the Carrier's conclusions of guilt. The Investigation indicates that on August 5, 1992 only two Machinists were assigned to do the work in dispute, the Claimant and Machinist Darden. The testimony of Machinist Darden, as well as his locomotive reports, indicate that he did not inspect Locomotive Metra 112. Machinist Darden testified that he indicated that to his Locomotive Foreman on the date in question. He also testified that the Claimant performed the top inspections where the deck covers for a number of cylinders were found left off. There is corroborating testimony from the Locomotive Foreman.

This Board does not need to get into conflicting testimony between the Locomotive Foreman and the Claimant in the alleged admission on the date of the event. We are well aware, that in our appellate role, issues of contradictory testimony and credibility may not be properly resolved by us. However, it is proper for this Board to determine from all of the evidence of record as to whether there exists substantial evidence to reach a conclusion of guilt. The record of testimony and clarity with regard to the Locomotive Foreman and Machinist Darden's testimony stand in stark contrast to the Claimant. A careful review of the Locomotive Departure and Trip Maintenance Sheets and testimony thereof is sufficient to substantiate the Carrier's decision. The only other Machinist who could have performed the inspection of Metra 112 is absolutely clear that he did not do so. The Claimant's name appears on the sheet even though there exists dispute over signatures. Additionally when asked if he inspected the units he indicated that he "could have".

In view of the record before this Board, we find that the evidence leads to the reasonable conclusion that the Claimant violated Rule 570. The discipline assessed will not be disturbed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of February 1995.