

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12853
Docket No. 12751
95-2-93-2-8

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers, System Council No. 14
(
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

- "1. That under the current Agreement, Mechanical Department Electrician M. G. Cassidy was unjustly treated when he was suspended from service for a period of seven (7) days beginning April 4, 1992 through and including April 10, 1992, following investigation for alleged violation of portions of Rule 802 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).
2. That accordingly, the Southern Pacific Transportation Company be ordered to compensate Electrician M. G. Cassidy for all lost wages due to the seven (7) day suspension, with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of ten percent (10%) per annum."

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 was notified to attend a formal Hearing to consider his responsibility, if any, for violating that part of Rule 802 which states, "Indifference to duty, or to the performance of duty will not be condoned." Following the Hearing of March 6, 1992, the Claimant was found guilty. Specifically, the Carrier argues that it has met the burden of proof that on December 29, 1991, at the West Colton Ready Track, the Claimant failed to properly inspect an outbound consist. That "indifference to duty" permitted Unit SP 9612 to leave the yard with it's #4 traction motor cut out.

The Organization does not deny that the Claimant was informed that the unit had problems and that the motor was cut out. Neither does the Organization deny that the Claimant signed the Outbound form. The Organization argues, however, that by existing procedure at the West Colton Ready Track, the Claimant performed his responsibilities properly.

The testimony documents that when the three units came in as a consist, the Claimant signed the Outbound form for the power and brake test. However, there is ample testimony as to a practice with the form on this property. That testimony confirms that if defects were found, they were reported directly to the Supervisor, rather than written on the form. The form was signed as an indicant that the service was performed. As stated by the Claimant:

"It doesn't designate if we found any trouble or reported it. All we did is sign the sheet to verify that we did service the power."

In this instant record, the Board finds strong evidence of a consistent pattern whereby defects were verbally reported to the Supervisor and the Outbound sheets were signed indicating that work was performed, without note of defects. The testimony of the Claimant is that his partner went to inform the Supervisor of the problem and he later observed him coming out of the office and confirming that fact.

The Board finds extensive support for the Claimant's position that his actions were consistent with the practice on the property. The General Foreman who conducted the inquiry, as well as both the Roundhouse Foreman and the Supervisor on the Service Track, do not dispute a practice consistent with the Claimant's actions. A careful review indicates that units were often run through the service track without servicing and the General Foreman indicated it was a practice that was discouraged, but had not ended. The Supervisor of the Service Track denied receiving verbal notification of the defect. Importantly, although he disputes being told of the problem, he does not dispute a practice of reporting problems directly to the Supervisor, rather than listing them on the Outbound form.

The Board therefore fails to find sufficient probative evidence that the Claimant's actions indicated indifference to duty in violation of Rule 802. The Board cannot find sufficient proof within the full record to conclude that the Claimant was indifferent, did not perform his job properly or acted without concern for his responsibilities. This is more than an issue of credibility, but sufficiency. The Carrier has failed to produce evidence sufficient to prove a violation. The Claim is sustained to the extent permitted by Agreement. That part of the Claim relating to interest is denied.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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