

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13089
Docket No. 12979
96-2-95-2-1

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(CSX Transportation, Inc. (former
(Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That, in violation of the current agreement, CSXT (former Baltimore & Ohio Railway [sic] Company) arbitrarily disciplined Machinist A. E. Harris by unjustly assessing a five (5) day overhead suspension. The suspension was effective March 25, 1993.
2. That, accordingly, CSXT be ordered to remove the five (5) day overhead suspension from Machinist A. E. Harris's [sic] file and that his record be cleared immediately."

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 were given due notice of hearing thereon.

At the time the incident at issue in this case occurred, Claimant was assigned as a Machinist in Carrier's Cumberland, Maryland, locomotive repair facility. On February 23, 1993, Claimant was notified to appear at an Investigation regarding his alleged failure to complete repairs on Locomotive 4308 on February 19, 1993. Specifically, he allegedly failed to "true" the number four wheel, resulting in the right end cap falling off while the locomotive was in service. Following the Investigation, Claimant was assessed a five day overhead suspension. The Organization filed a claim protesting the discipline and subsequently progressed the claim in the usual manner.

It is undisputed that the evidence against Claimant is circumstantial. The end cap was found missing from the number four traction motor on February 22, 1993, some 60 hours after Claimant had worked on it. The Carrier maintains that the circumstantial evidence is compelling, and no alternative explanation is possible. It also point out that, under the circumstances, a five day overhead suspension is lenient. The Organization contends that the circumstantial evidence is weak, and that there are credible alternative explanations for the missing end cap.

In many cases before this and other Boards, circumstantial evidence, when clear and convincing, has been found to be sufficient cause for discipline. In the instant case, however, the circumstantial evidence is insubstantial. It is unrefuted that it was Claimant's responsibility to torque the bolts on all four end caps on the engine in question. Claimant testified that he applied the bolts, ran them down with a nut runner, and torqued them on all four journal boxes. In a letter read into the Hearing record, Claimant's Foreman testified that he saw Claimant place the bolts on the journal box and run them down, but did not stay to observe him torque them, because he had work at another part of the shop. A Carrier witness testified that he did not believe it was possible to forget to torque a wheel down, and a second Carrier witness testified that in cases of extreme vibration, even properly torqued bolts might come loose from an end cap. A final alternative hypothesis, raised by Claimant, was that a road crew might have removed the cap to use on another engine, an act which could have been carried out while the engine was in service during the 60 hours after it left the Cumberland Shop.

In light of the foregoing, the Board finds that the circumstantial evidence presented against Claimant is insufficient to support a finding of culpability.

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AWARD

Claim sustained.

ORDER

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.

National Railroad Adjustment Board
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.