

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13287

Docket No. 13001

98-2-95-2-21

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(International Brotherhood of Electrical Workers,
(System Council No. 14**

PARTIES TO DISPUTE: (

**(Southern Pacific Lines (St. Louis Southwestern
(Railway Company)**

STATEMENT OF CLAIM:

"1. That the Southern Pacific Lines (St. Louis Southwestern Railway Company) violated the controlling agreement, particularly Rule 24, but not limited thereto, when they unreasonably, unjustly and arbitrarily assessed a fifteen (15) day suspension to Electrician J.L. Herring, beginning March 4th, 1994, following an investigation held on February 1st, 1994.

2. Accordingly, the Southern Pacific Lines (St. Louis Southwestern Railway Company) be ordered to compensate Electrician Herring as follows:

- (a) Compensate him for eight (8) hours each day at the prevailing rate of pay of electrician, commencing March 4th, 1994, and for fifteen (15) days--including date returned to service, and all applicable overtime;**
- (b) Make him whole for all vacation rights;**
- (c) Make him whole for all health and welfare and insurance benefits;**
- (d) Make him whole for all pension benefits including Railroad Retirement and Unemployment Insurance;**

- (e) Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;
- (f) Any record of this arbitrary and unjust disciplinary action be expunged from his 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 were given due notice of hearing thereon.

The Claimant was subject to an investigative Hearing on the charge of violation of Rule 1007 as to "indifference to duty, or to the performance of duty." The charge stated:

"It is alleged that at approximately, 1:00 AM the morning of January 10, 1994, internal engine damage resulted due to overspeed of locomotive SP 8010."

The Organization argues that this is not a "precise" charge, as required by Rule 24. The Board notes that the charge does not specify any alleged act by the Claimant causing "internal engine damage." Nevertheless, the Claimant was on duty at 1 A.M. on January 10, 1994 and was assigned to work on locomotive SP 8010. The Claimant and the Organization were thus aware that the Claimant would be investigated concerning his work on this assignment, and the Organization was able to provide a full defense for the Claimant.

Likewise, the Organization protests discussions held with the Claimant prior to the investigative Hearing. The Board finds that such discussions were of a routine nature, given the equipment damage involved. There is no indication that the later investigative Hearing was tainted by such procedure.

As to the Claimant's responsibility for steps taken by him on his assignment to the locomotive, the Board finds the record sufficiently convincing to support the Carrier's conclusion that the Claimant was at fault.

As stated in Second Division Award 10044:

"While it is the Board's opinion that direct evidence is preferable to circumstantial evidence, in this particular case, the circumstantial evidence has been sufficiently established, and the reasonable inferences which follow lead to the probable conclusion that Claimants failed to perform their duties as charged."

This reasoning is fully applicable to the matter here under review, and the Board has no basis to find the resulting disciplinary action inappropriate.

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 15th day of June 1998.