

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13873
Docket No. 13766
05-2-05-2-17

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen/ Division of TCU
(Springfield Terminal Railway Company)

STATEMENT OF CLAIM:

- “1. Carrier violated the agreement when on July 12, 2004 it assessed a suspension of three (3) working days on Anthony T. Jean commencing on July 12, 2004 through to and including July 14, 2004.
2. Carrier shall compensate the claimant for time spent attending the investigation and for the actual three (3) day suspension imposed and remove all reference to the imposition of this discipline from claimant's personal record and file.”

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, A. T. Jean, was charged with responsibility for damage which occurred to Truck 1940 on May 29, 2004. The Claimant was given a 3-day suspension as a result of an investigation on June 4, 2004.

The Organization argued that the suspension of three working days for the alleged violation of Safety Rule 276 was improper as the Claimant was charged with "failure to properly maintain Truck 1940." It is consistent with awards before the NRAB that charges must be precise so that claimants can properly defend themselves. The Claimant cannot be expected to maintain the trucks since he is not a vehicle mechanic. The Claimant fulfilled his responsibility to the Carrier by reporting defects on Truck 1940 by fax. Two other employees were brought forward who testified that they found the problem only after they heard a clanking noise. Their inspections were done in daylight whereas the Claimant performed his inspections in the dark. The Organization would note that Carrier witnesses contradicted themselves. Arbitrators have found that to sustain a charge of negligence the Carrier must prove evidence beyond mere suspicion and supposition. The Claimant properly notified the Carrier regarding the problem with the truck to other carmen who were ordered to drive the truck despite the Claimant's warnings. They did not find the problem until they actually drove the truck. They did not find anything due to their walk-around inspection. The Carrier violated the Claimant's due process rights when it charged him improperly. In addition the Carrier failed to meet its burden of proof and, therefore, the claim should be sustained.

The Carrier argued that on May 20, 2004 the right rear wheel on Truck 1940 was being held onto the truck by one stud and one lug nut. The truck tire has a total of eight studs and corresponding lug nuts, therefore, six of the eight studs were actually missing. The right rear wheel was visibly leaning out of position. The truck had to be towed to Billerica to be repaired. The rim and cuff were ruined from the truck having been driven in this condition for an extended period of time. The last person to drive the truck prior to May 20 was the Claimant. He is the primary driver of this vehicle. The truck had been inspected by the State of New Hampshire on April 13 just before the truck was delivered to the Claimant. The condition was discovered a little over a month later. The Claimant is responsible for inspecting trucks, and he was derelict in his duties. The damage that the vehicle sustained is inconsistent with the Claimant's assertion that the condition occurred

suddenly. Had the Claimant performed the required inspections, he would have been able to discover the damage to the vehicle.

The Claimant's defense that it was dark is unsupported. He testified that he used his lantern to inspect the drive shaft, therefore, he could have used his lantern to inspect the wheels on the truck. The Claimant testified that he inspected the drive shaft because the "rear end feels funny," but he did not take the time to look at the wheels. The Claimant's other theories are not substantiated by any evidence.

The Organization brought forward a procedural argument. The record shows that any objections that had a reasonable basis were properly considered and ruled on by the hearing officer. The Organization has failed to establish the existence of a procedural defect. Therefore, the discipline given was appropriate and not excessive or unreasonable and the claim should be denied.

Upon complete review of the evidence the Board finds that, while the actual maintenance of the truck is not under the purview or responsibility of the Claimant, the obligation to inspect the truck was clearly the Claimant's responsibility. The Board finds that this is clearly a very dangerous situation. The right rear wheel on Truck 1940 could have easily become separated and fallen off at speed resulting in serious injury to not only the Claimant but potentially also to other individuals. Even in the dark with the use of a lantern or other lighting device it should have been clear to this Claimant that this truck should not have been operated at all. This fact was clear to two other Carrier employees who attempted to operate this vehicle the following day. The Carrier has proven the basic facts of this case. There are no procedural issues sufficient to overturn. The penalty was within the range of appropriate penalties for the proven offense and, therefore, the Board does not have any cause to substitute its judgement for that of the Carrier in this matter, and the claim shall be denied.

AWARD

Claim denied.

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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 22nd day of December 2005.