

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13916
Docket No. 13798
07-2-06-2-2

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (**(International Brotherhood of Electrical Workers**
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

- "1. That the Kansas City Southern Railway Company violated the Controlling Agreement, particularly Rule 29, but not limited to, when Shreveport, Louisiana Electrician, Carlos McCoy was unjustly and Arbitrarily dismissed from service on March 2, 2005, following Investigation held on February 15, 2005.**
- 2. That, accordingly, the Kansas City Southern Railway Company make whole Carlos McCoy as follows: (a) reinstate him to service with seniority rights unimpaired; (b) compensate him for all wages lost at the prevailing rate of pay of electricians' and all applicable overtime; (c) compensate him for all vacation rights; (d) make him whole for all health and welfare insurance benefits; (e) make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance; (f) make him whole for any and all other benefits that he would have earned during the time withheld from service, and; (g) any and all records 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.

On January 27, 2005, Carrier notified Claimant to appear for a formal Investigation on February 15, 2005 concerning the following charge:

“The purpose of this investigation is to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to properly perform assigned duties on January 13, 2004 resulting in a derailment of KCS (644) at the Shreveport Diesel facility.”

On March 2, 2005, Claimant was notified that he had been found guilty as charged and was dismissed.

It is the position of the Organization that Carrier erred in dismissing the Claimant and that a review of the transcript indicates that Claimant was deprived of a fair and impartial Investigation. Additionally, it argues the Carrier failed to meet its burden of proof and if discipline was appropriate, which it denies, it was excessive.

Carrier argues there is no validity to the Organization's procedural arguments or that Claimant was denied a fair and impartial Hearing. It submits that Claimant is guilty as charged. Claimant's failure to properly perform his duties placed the safety of himself and his co-workers in jeopardy. Coupled with his

short length of service and prior discipline record, its assessment of dismissal cannot be considered arbitrary, excessive, or an abuse of managerial discretion.

The Board has reviewed the transcript and record of evidence and finds no merit to the Organization's procedural arguments or that Claimant was deprived a fair and impartial Hearing. At the conclusion of the Hearing the Claimant and Organization stated that with the exception of the Notice of Charges not being specific, they believed the Investigation had been conducted in a fair and impartial manner.

Turning to the merits it is clear that on January 13, 2005, Claimant was working on the second shift at Carrier's Diesel Shop at Shreveport, LA. At approximately 6:45 P.M., Claimant and another employee (Hill) were instructed to move a four-unit locomotive consist from Track 50 to Track 70 North in the roundhouse for inspection. A blue flag and derail was applied at the point on Track 70 where it nears the roundhouse for protection of employees working in that area.

Hill was operating the locomotive consist and Claimant rode the platform on the head end of the leading locomotive. The derail/blue flag was on the opposite side of the track from Hill's position at the locomotive's controls. As the locomotives proceeded towards the derail/blue flag, the Diesel Shop Foreman observed the movement from his nearby office window. The Foreman noticed that the engines were not slowing down as they approached the derail. He waived his arms at the window and succeeded in getting the Claimant's attention at which time he pointed towards the derail/blue flag. Claimant then saw the derail, and began giving instructions to Hill to stop the locomotives. The distance to the derail was too short and by the time the locomotives stopped, two wheels had been derailed.

It is clear by the testimony of the Diesel Shop Foreman and Mr. Hill who operated the locomotives that Claimant was negligent in the conduct of his duties, placing his safety and others in jeopardy. He did not give the operator of the engines an adequate amount of time and space for stopping clear of the derail/blue flag.

Claimant testified he instructed Electrician Hill with the command "that'll do, Stop" at one engine length preceding the derail (which according to him was

sufficient space to stop based upon the speed of the locomotive) and it was only after the locomotives failed to slow down he again gave the command to stop three times is not persuasive. The testimony of the Carrier's witnesses was more credible than that of the Claimant's self-serving testimony.

The Carrier met its burden of proof that Claimant was guilty as charged. The only issue remaining is whether the dismissal was appropriate. At the time of the offense Claimant was a short term employee with three years seniority. He had previously been disciplined twice for violation of Carrier rules and regulations with a Letter of Reprimand for failure to report for duty at the specified time and a suspension for his failure to properly perform his duties resulting in a sideswipe (another moving violation) of two locomotives. The Board finds and holds that dismissal is appropriate in this instance because it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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 6th day of August 2007.