

The Third Division consisted of the regular members and In addition Referee Elmer F. Thias when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The fifteen (15) days of suspension imposed upon Machine Operator **J. Flores** for alleged failure to properly maintain and service Backhoe No. 136 was without just and sufficient cause and on the basis of unproven charges.

2. The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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.

The Claimant had been employed by the Carrier for a period of ten years without prior **discipline** having been imposed. He was assigned as a Machine Operator with exclusive responsibilities over Backhoe No. 136. on or about January 15, 1985. the Claimant was displaced **from** his position and the employe who displaced him noticed a decided difficulty in steering the machine. This was reported to the proper authorities and the front end of the Backhoe was promptly **inspected**.

The Claimant was charged with failure to properly maintain and **ser-**vice the Backhoe and a formal Investigation was held on January 24, 1985. **The** Claimant was present at the Investigation and he was accompanied by a **Repre-****sentative** of the Organization. The Investigation was conducted in a fair and impartial manner. Subsequently, the Carrier found the Claimant guilty of the charge and assessed a fifteen day deferred suspension as a consequence thereof.

We are first confronted with what appears to be a threshold issue in that the Carrier maintains the suspension is moot. Carrier states the deferred suspension should be allowed to remain as it has not and will never be served by the Claimant. The Carrier has cited Awards of the Second and Fourth Divisions in support of its position and these have been reviewed. On the other hand, the Organization argues that the discipline is not moot; the charge and discipline may not be allowed to stand on the Claimant's record because it is not supported.

We would understand that **the** position advocated by the Carrier is that the evidence of record supports the charge levied against the Claimant and it intends for notation of the charge and its finding to be carried on the Claimant's disciplinary record. While the quantum of discipline announced in this case may be moot because it has not and never will be served, we need not decide the issue of the merits of the discipline being moot in view of our decision on those merits.

During the Investigation, the Claimant testified that he had operated and maintained Backhoe No. 136 for approximately two and one-half years. He indicated that he lubricated and properly greased the machine during the time. He indicated further that he had not noticed any defects in the machine and that he did not encounter difficulty in operating it. The Foreman, who exercised supervision over the Claimant, also gave testimony during the Investigation and that testimony corroborated the testimony of the Claimant. The Foreman stated that he had observed the Claimant while he was greasing the Backhoe. On the other hand, the Supervisor Maintenance of Way Equipment testified that he was informed of the condition in which the Machinist found the Backhoe, checked the machine, and the bottom bearing on the king pins had not been greased in quite a while, the axle was worn and the bearings on the grease seals were all out on the bottom. While the top bearings had been greased, the bottom bearings had not and the swivel bearings had not been sufficiently greased. The Machinist testified that the new operator of the Backhoe reported he had difficulty in holding it in the road. The Machinist inspected the machine and when he was checking the wheels and had leaned against one stoutly, the other wheel fell off. He indicated that the bottom bearing was beat out and there was a noticeable lack of grease. He also testified that his review of the maintenance file indicated a period of three or four months when the Backhoe had not been greased.

It is not our responsibility to evaluate and weigh the evidence brought forth during the Investigation on the property. The Claimant gave direct testimony, which was corroborated by the Foreman from observation, that the Backhoe had been properly and regularly greased. The Claimant had operated the Backhoe exclusively and he had not noticed defects or had encountered difficulty in operation. The testimony of the Supervisor Maintenance of **Way** Equipment and the **Machinist** was **in** most respects circumstantial in nature but both had many years of knowledge and experience in the work of **maintaining** Maintenance of Way **equipment**. Both attributed the condition of the Backhoe to a failure to properly **grease** the bottom front-end bearings on that machine. It is our decision, then, that there is substantial evidence in the record which supports the finding of the Carrier on the charges herein. Additionally, no basis is indicated to **disturb** the deferred suspension announced.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1988.