

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30676
Docket No. MW-28553
95-3-88-3-424

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier's decision to disqualify Mr. L. Mickell as an Equipment Operator effective August 14, 1987 for the alleged failure to properly grease and lubricate Ballast Regulator BRD-715 was arbitrary, capricious and on the basis of unproven charges (System File C-D-3956/12(87-1014)).
- (2) Mr. L. Mickell shall be allowed the remedy stipulated in Rule 24(e)."

FINDINGS:

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The Third 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 waived right of appearance at hearing thereon.

On July 22, 1987, Claimant, a Ballast Regulator Operator, was operating Ballast Regulator BRD-715 when it experienced a universal joint failure causing the drive shaft to fall out of the machine. According to the Carrier, a subsequent inspection of the equipment by the equipment mechanic revealed the joint failure was caused by the lack of proper grease and lubrication of the machine.

As a result of this incident, Claimant was charged with failing to properly grease, lubricate and maintain proper fluid levels in Ballast Regulator BRD-15, resulting in damage to that machine on July 22, 1987, and a formal Hearing was scheduled for August 6, 1987 in connection with the charges. Following the Hearing, Claimant was disqualified as an Equipment Operator effective August 14, 1987.

Carrier contends that: (1) Claimant was afforded a fair and impartial Investigation; (2) Carrier met its burden of proving with substantial evidence that Claimant was guilty as charged; and (3) the penalty of disqualification was fully justified. The Organization, on the other hand, argues that there was no credible evidence to support the charges lodged against the Claimant. To the contrary, it asserts that Carrier relied upon after-the-fact speculation as to the cause of the incident, and that the more likely explanation was that the universal joint simply needed to be replaced. Moreover, the Organization points out that Claimant insisted that he did perform the necessary maintenance on the machine.

Under these circumstances, the Organization submits that Carrier's decision to disqualify the Claimant was arbitrary, capricious and without evidentiary support. Carrier counters that the findings are fully supported by the evidence present on the record.

This Board has carefully reviewed the transcript of the Hearing and the arguments of the parties. We are convinced that there is sufficient credible evidence in which to support the charges. Machine Operators are responsible for the care and maintenance of the equipment to which they are assigned. Testimony from two experienced and credible mechanics indicated that this machine had not been properly lubricated nor fluid levels maintained for several weeks prior to the incident at issue. Moreover, the record suggests that routine proper maintenance by the Operator should have resulted in detection of possible problems prior to total failure. These statements were found to be credible by the Hearing Officer on the property.

To the extent that there are credibility conflicts or discrepancies in the record, we must reiterate what has already been said in many prior Awards of this Board. It is not the Board's function to weigh the evidence, appraise the credibility of witnesses, or substitute its judgment for that of the Hearing Officer in the absence of a showing that Carrier's determination was arbitrary, capricious or discriminatory. Third Division Awards 4840, 15025. We find nothing in this record to overturn the findings as originally determined.

As for the penalty, it is clear that Claimant's past record provides ample justification for disqualifying him as an Operator. His record shows that he has been previously disqualified from operating four other machines. Claimant simply has not complied with the standards required by Carrier in maintaining the equipment for which he is responsible, and we cannot say, under these circumstances, that Carrier's determination to remove this employee from the position of Machine Operator warrants our interference.

AWARD

Claim denied.

O R D E R

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 Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.