

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 36

AWARD NO. 24

CASE NO. 1370 MW

FILE: SL-289-T-80

PARTIES TO DISPUTE:

Illinois Central Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The ten (10) day suspension imposed upon Motor Car Repairman J. D. Brown for his alleged failure to fill Tie Injector KTM-102 with oil which resulted in damage to the engine was without just and sufficient cause (Case No. 1370 M of W).
- (2) Motor Car Repairman J. D. Brown shall be compensated for all wage loss suffered during the ten (10) day suspension."

OPINION OF BOARD

The Claimant was notified to attend an investigation concerning certain damage to a Tie Injector.

Subsequent to the investigation, the Carrier assessed a 10 day suspension on the Claimant.

The Employee had been assigned to perform certain work on a Tie Injector machine, and that work included changing the oil and filters. Claimant did not complete his assigned work on the machine, in that he did not fill the machine with new oil and he failed to inform supervision that the work was not finished. When the machine was used the next work day, certain engine parts locked due to a lack of oil.

The Claimant concedes that he was assigned to change oil, oil filters and fuel filters on a number of machines, and he also concedes that he had drained the oil from the

Tie Injector and replaced the appropriate filters, however before he was able to replenish the oil supply, he was instructed by his Foreman to perform certain other work in another shop. He complied with those instructions, and spent the remainder of his assigned hours on the subsequent assignment.

Thus, the Employee insists that the true fault lay with the individual who used the machine the next work day without checking the oil level. The subsequent employee did concede that he failed to check the oil prior to starting and using the machine.

There appears to be little, if any, controversy concerning the facts of the case, inasmuch as it is conceded that the Claimant did not replace oil into the machine; and it is equally clear that his failure to have done so was the result of an instruction that the Claimant see to a different task. While the failure to put the oil in the machine may very well not be the fault of the Claimant because of instructions from higher authority, nonetheless, it is unquestionable in the minds of the Board that he had some duty to advise the Supervisor that work on one of the machines was only partially completed. We are not sure, however, that that inaction exonerates the subsequent employee from failure to have checked for oil, especially since a long holiday week-end had intervened since the machine was last used. However, that employee's claim is not properly before us, except as it might relate to this particular Claimant.

Certainly, this matter is not free from all doubt, and cogent arguments concerning culpability may be presented by both parties. Without, in any manner, condoning the Employee's action in toto, we can understand the possibility that the Supervisor's instruction and the inaction by the subsequent employee could be contributing factors to this incident, and accordingly, we will reduce the suspension to five (5) days.

FINDINGS

The Board, upon consideration of the entire record, and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

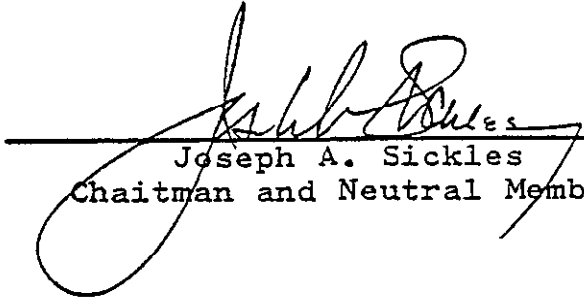
This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.


AWARD

1. Claim sustained to the extent that the Board upholds a five (5) day suspension.

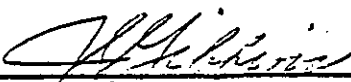
2. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



J. S. Gibbins
Carrier Member



DATE