

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. The Carrier improperly suspended R. J. Leo and D. G. Feller from service for a period of 15 day from June 4, 1973 to June 18, 1973;
2. R. J. Leo's estate and D. G. Feller be reimbursed for all wages lost and overtime lost which overtime lost shall be computed on the basis of the average semi-monthly earnings from January 1, 1973 to May 31, 1973.

Findings:

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

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

Each of the two Claimants is a machinist at Oelwein, Iowa, who was administered a fifteen day suspension for failing to perform their duties on the first trick Reseal Gang in that during his eight hour tour of duty, he accomplished only three hours' work on Unit 1569.

The record establishes that both machinists were assigned to work on Unit 1569 on the day in question and begin a reseal program that involves a five-day overhaul cycle on the main engine of the locomotive. Claimants testified that during the day, they completely removed test cocks, lubelines, fuel lines, micro rods, pee pipes, crab nuts, rocker arm nuts, 3/4 of the basket bolts on the crankcase and covers on one side of the air box. According to Claimants, some of their time on duty was spent in looking for tools and

manipulating doors that had not been removed and that Mr. Leo was away from the unit performing other services for about $1\frac{1}{2}$ hours. They maintain that they accomplished a reasonable amount of work for eight hours and completely satisfied time schedule requirements for the first day in the reseal program as prescribed by Carrier.

There is no evidence that anyone complained to Claimants or warned them regarding their work output that day or that they left their assigned duties for any unauthorized purpose or disobeyed instructions or acted in any other improper manner.

Nor is there persuasive proof that Claimants failed to perform their assigned duties. Methods Engineering Analyst O'Neil, a witness characterized by Carrier as probably the most knowledgeable in regard to what constitutes a fair day's reseal work, was not even in the Shop to observe Claimants on the day in question and did not know what conditions and problems confronted them or additional duties they were required to perform. The testimony of Superintendent Jolly, General Shop Foreman Bolgioni and Foreman Foster does not establish the case against Claimants for it is far too general and lacking in specifics and all three had difficulty in detailing just where Claimants' work fell short. None of them showed exactly what was required by the reseal program on the first day

If Carrier considered Claimants' actions insubordinate or undermining, specific charges could have been issued with respect to those points and evidence submitted in their support. However, that was not done in this case and Carrier instead relied on allegations that Claimants had not performed an adequate amount of work. These allegations are not supported by the record and Carrier has not sustained its burden of proof in that respect.

Quite apart from the foregoing it is evident that the record is also defective because of a number of material errors by the Hearing Officer. For example, in a case of this nature where Superintendent Jolly had testified that Claimants did not complete the work required by Carrier's schedule, questions on cross examination probing his knowledge of the program were highly pertinent and should not have been barred by the Hearing Officer on the ground that "Jolly is not the person under charge. He is strictly a witness for management."

Similarly, when Claimant Feller attempted to question Mr. Foster regarding his recollection as to who replaced Mr. Feller on a certain day, the Hearing Officer intervened, stating that "Mr. Foster's memory is not under charge." It of course was material error to prevent the cross-examiner from testing Mr. Foster's ability to recollect.

It also was improper for the Hearing Officer to interfere with cross examination of Mr. Bolgioni when Mr. Feller asked him to relate what steps are required to be done on the first shift first day of the reseal program. Although that was the very requirement in issue, the Hearing Officer cut off that line of interrogation with the statement that it was unnecessary for Mr. Bolgioni to prove to Mr. Feller that he knows the precise steps. Each of those four witnesses was **claiming**, without specifics, that two first trick machinists were not performing adequate work on the first day of the reseal program and yet the Hearing Officer would not allow them to be cross examined regarding the requirements and the record does not substantiate the charges against Claimants and the claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch / *rs*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1975.