

Award No. 2112

Docket No. 2091

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

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

PARTIES TO DISPUTE:

THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION

THE NEW YORK CENTRAL RAILROAD COMPANY
(Northern District)

STATEMENT OF CLAIM: It is the claim and request of the Petitioning Organization that:

1. Respondent Carrier has violated Rule 18 — Discipline of the effective Agreement by their unfair and unjust suspension of Foreman C. B. Hayes for a period of thirty (30) days, March 24, 1964 to April 22, 1964, inclusive.

2. Claimant C. B. Hayes' temporary suspension shall be revoked, his record shall be cleared and he shall be compensated for all wage loss for the period of his suspension, March 24, 1964 to April 22, 1964, inclusive.

OPINION OF BOARD: Claimant, an assistant enginehouse foreman, received a thirty-day suspension for negligence in causing damage to a diesel locomotive.

Petitioner contends that prior to the hearing that was held in the matter, Claimant was never notified of any charges against him. That argument is not supported by the record. Claimant was given timely written notice to appear in the General Foreman's office "at a specified time, to determine your responsibility relative to extensive damage to Diesel Unit 5645 at West Detroit, February 27th, 1964 — crank shaft scored." Claimant appeared at the hearing, was duly represented and afforded fair opportunity to present his case. During the course of the hearing, neither Claimant nor his representative raised any objection to the adequacy or form of the notice or requested a continuance or postponement. It is evident from an examination of the transcript of hearing that both were aware of the gravity and nature of the investigation. We are satisfied that no reversible procedural error was committed by Carrier.

The record indicates that the diesel sustained some \$30,000 damage when the engine was started without lubricating oil during Claimant's shift. While Claimant did assign an experienced machinist and inspector to service

the engine, he did not examine the turnover book, or know that lube oil was needed at the time in question. He has not explained sufficiently his failures in that regard and we, therefore, are of the opinion that the record is adequate to support Carrier's determination as to Claimant's responsibility and discipline.

We are not in a valid position to substitute our judgment for that of Carrier in this matter, and must deny the claim.

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

The carrier and the employe 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.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1966.

DISSENT OF LABOR MEMBERS TO AWARD 2112 (DOCKET 2091) — ARSA vs. NYC

The majority of the Board has erred in this Award and we dissent.

LABOR MEMBERS

J. P. Tahney
W. J. Ryan
A. T. Otto, Jr.