

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 25329
Docket No. 44950
02-1-00-1-S-6800

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: ((Springfield Terminal Railroad

STATEMENT OF CLAIM:

"On April 1, 1999 at approximately 1240 hours, Engineer John Brown reported possible flat spots on Locomotive 51 on Train POSD. On April 2, 1999, after a mechanical inspection at Waterville, ME.. it was determined that there were flat spots on the #1 and #3 wheels of Locomotive 51. The Carrier downloaded the locomotive's event recorder and as a result thereof, it was alleged that the flat spots were created while locomotive 51 was being operated by Hostler Goodblood. As a result, on April 29, 1999, a hearing was held for ST Railway Co. Hostler, Patty Goodblood, in connection with the following, 'Negligence in the performance of duties.' As a result of that investigation, she was assessed 'Five (5) working days off, without pay. Those days will be June 2, 3, 4, 5, and 6, 1999,' by letter dated May 27, 1999 over the signature of D. F. Dean, GSMP, ST. Railway Co.

Immediate removal of 'Five (5) working days off, without pay from the discipline record and payment of all lost time, and expenses as a result of the assessed discipline is requested.'"

FINDINGS:

The First 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 were given due notice of hearing thereon.

Locomotive 51 was released from the Engine House at 6:00 A.M. on April 1, 1999 and was eventually picked up by train POSD, which departed Waterville at 12:20 P.M. Approximately 20 minutes later, POSD Engineer John Brown reported possible flat spots. The locomotive was returned to the Waterville Engine House the following day, where a wheel inspection was performed and the locomotive was reported to have condemning flat spots on the #1 and #3 wheel sets and a non-condemning flat spot on the #2 wheel set. No flat spots had been detected or reported when locomotive 51 was used by local switcher WA2 on March 31, 1999, in local service at Waterville, Maine. At 3:30 P.M. WA-2 went off duty and the locomotive went to the Waterville Engine House for service where Claimant Goodblood was the Holster on duty on from 3:00 to 11:00 P.M. on March 31, 1999.

Download and analysis of the information from the event recorder on locomotive 51 demonstrated that certain unconventional movements of that locomotive during the time period between 10:00 P.M. and 11:30 P.M. on March 31, 1999, probably created the flat spots in question. Following an Investigation on due notice, the Carrier concluded that since the Claimant was the Hostler on duty when the damage took place she must have been the individual who caused the damage. Based on that conclusion and her prior disciplinary record, the Carrier imposed a five-day suspension without pay, by Notice of Discipline dated May 27, 1999, reading in pertinent part as follows:

"Negligence in the Performance of Duties. Specifically, on April 1, 1999 at 1240 hours, Engineer J. Brown reported possible flat spots on Locomotive 51 on Train POSD. On April 2, 1999, it was determined that #1 and #3 traction motor wheels had condemning flat spots. The download suggests that the flat spots were created while you were operating the locomotive at the Waterville Engine House on March 31, 1999 on the 3-11 shift.

After careful review of this Investigation/Hearing, I find that the Carrier was successful in substantiating its charge. Therefore, as discipline, you will be required to take five (5) working days off, without pay. Those days will be June 2, 3, 4, 5 and 6, 1999."

Careful review of the record persuades the Board that the Carrier failed to prove its charge that the flat spots were created while the Claimant was at the controls of locomotive 51. Indeed, the letter imposing the disciplinary suspension concedes as much, in asserting that the event recorder download merely "suggests" that the Claimant was operating locomotive 51 during the time period when the damage occurred.

According to unrefuted testimony from the Claimant and Machinist Sicard, they retrieved locomotives 51 and 77 from the east end of the holding pen and moved them for fueling, sanding and servicing at about 6:00 P.M. and did not move them again before going off duty at 11:00 P.M. Machinist Sicard also corroborated the Claimant's unrefuted testimony that during the remainder of her shift she was assigned to perform menial tasks (including cleaning the washroom facilities) at a different location. When asked about this, the Claimant's immediate Supervisor testified that he had no recollection about any of the duties he might have assigned her that evening and merely asserted that the on-duty Hostler usually but not always moves such units.

It is undisputed that the damage occurred during her shift and that the Claimant operated the units from the holding pen to the fuel/service track. This type of evidence does warrant the Carrier's suspicion that she might have been the culprit, but it does not rise to the level of substantial proof of her culpability which is required in such matters. On an appropriately developed record, where no reasonable explanation consistent with innocence is demonstrated, purely circumstantial evidence might be sufficient to establish guilt. However, "... it cannot be so used when the evidence relied upon also supports other conclusions which would exonerate the accused." See, First Division Award 24197. See, also, First Division Awards 24269, 24254, 25001 and Third Division Award 22365. A "suggestion" of guilt premised solely on proximity and opportunity is not sufficient to carry the burden of proof in this case.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 28th day of June, 2002.