

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: ( System Federation No. 6, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. As a result of an investigation Carman Leo E. Flynn was suspended from service for a period of five (5) working days. This action by the Elgin, Joliet and Eastern was unjust, unfair, and arbitrary.
2. That accordingly, the Elgin, Joliet and Eastern Railway Company be ordered to pay Carman Leo E. Flynn eight (8) hours pay at the pro rata rate for each of the five (5) working days he was suspended, a total of forty (40) hours pay at the pro rata rate.

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 employees 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.

In his report on accident which resulted in injury to himself, Claimant attributed mishap to his failure to wear burner jacket. Record shows that burner jacket was expected to be worn, was standard issue to employees and cleaning and replacements thereof were known by employees to be available at management expense. Accordingly, Claimant's explanation that the jacket was issued to him was at home being laundered does not justify his failure to have worn this piece of safety equipment at the time of the accident. At trial Claimant gave as his own opinion that burns to him might have been caused by wearing of flammable jacket with grease spots on it and holes which might have admitted and trapped gasses.

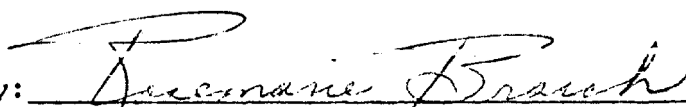
We note, however, that Carrier has based its penalty, in part, on an allegation of a past record of unsafe performance by Claimant. The record shows Claimant to have sustained 7 accidents over a period of fourteen years but there is no evidence that any of these was caused by unsafe action of Claimant. Accordingly, this consideration for assessment of degree of penalty should rightfully be discounted. On that basis, the penalty will be reduced to the more commensurate one below.

A W A R D

Penalty shall be amended to a suspension from service for two (2) days with balance of lost pay rested to Claimant.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By:   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of February, 1974.