

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: ( System Federation No. 7  
( Railway Employees' Department  
( A.F.L. - C.I.O. (Carmen)  
(  
( Soo Line Railway Company

Dispute: Claim of Employee:

1. That the carrier violated the Agreement of January 1, 1954 as subsequently amended on November 28, 1973, Carman H. D. Schmidt was given a hearing that resulted in a five (5) work day suspension, March 4th thru the 8th, 1974 and entered on his service record.
2. That the hearing was improperly arrived at and represents unjust treatment within the meaning of Rule 32 of the controlling agreement.
3. That because of such violation and capricious action, Carrier be ordered to remove such charges from Carman H. D. Schmidt's personal service record and be compensated for the five (5) day wage loss at the current rate of pay.

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.

On November 23, 1973, Claimant and three (3) other Carmen (Denk, Ochoa and Ketchum) were requested to appear for investigation to place responsibility for failure "to properly secure Container CPSU 2613789" on SOO 5985 (loaded November 19, 1973 - and departing on November 21).

Subsequent to investigation, Carrier determined that responsibility for the accident rested with Claimant, and he was removed

from service without compensation for five (5) days.

We have thoroughly reviewed and re-reviewed the transcript of investigation and the remainder of the record, but we are unable to conclude that Carrier has substantiated its determination of guilt. Our review of the pertinent evidence shows that the container came loose some distance from the departure point, and that certain conclusions were reached based upon inspection some 100 miles away. Yet, there was no evidence presented at the investigation which effectively contradicted the direct testimony that all containers were properly secured and that locking devices were in place when Claimant concluded his work.

It appears that Carrier has engaged in significant speculation in reaching its conclusions.

Although it is not our function to substitute our judgment for that of Carrier; nonetheless, evidence adduced must support a reasonable inference of fact. See Awards 6487 and 6713. Carrier did not present substantive evidence to support its finding of guilt.

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 /ae  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of November, 1976.