

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the Agreement of September 1, 1949, as subsequently amended when on January 3, 1975 Car Repairers, R. L. Zapp and A. F. Sisler were given a formal investigation for charges that were not specific, resulting in unreasonable and capricious assessment and a thirty (30) day record suspension against their service record.
2. That the investigation was improperly arrived and and represents unjust treatment within the meaning of Rule No. 37 of the controlling Agreement.
3. That because of such violation and capricious action, Carrier be ordered to remove such thirty (30) day record suspension from said employee's service record.

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.

The Board has reviewed the entire record in this case and has found no reliable evidence to show that the Claimants failed to detect an improperly secured chain which dragged through a switch causing a derailment. There was no evidence to show that such a chain was improperly secured at the time the Claimants inspected the car in question. The train traveled some twenty-five miles after the inspection and before the derailment occurred. The chain could have become unsecured at any time. Circumstantial evidence may be used to prove a disciplinary offense. Mere speculation, however, is not sufficient to meet the Carrier's burden of proof.

Form 1
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Award No. 7663
Docket No. 7381
2-N&W-CM-'78

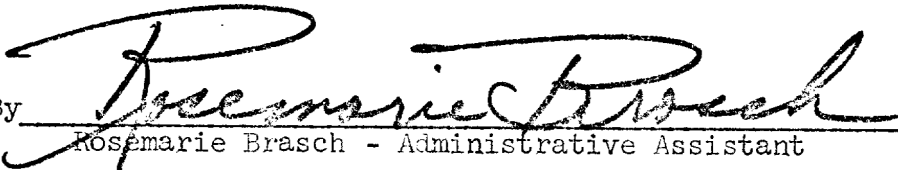
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1978.