

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Freight Car Repairman William Van Kleek was unjustly assessed ten days suspension, effective January 11, 1977.
2. Freight Car Repairman William Van Kleek was erroneously charged with "pulling a car on the Spot Rip while Airbrakeman was working on car, as indicated by red flag displayed on car on November 30, 1976."
3. That the Chicago and North Western Transportation Company be ordered to compensate Freight Car Repairman William Van Kleek for all time lost at eight hours per day from January 11 to January 21, 1977, plus any other benefits he would have received had he not been unjustly suspended.

Findings:

The Second 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 waived right of appearance at hearing thereon.

The pivotal question raised in this dispute is whether or not the ten (10) days suspension was excessive.

Our review of the record indicates that while Carrier's last minute postponement of the originally scheduled investigation from December 21, 1976 to December 29, 1976 and the timeliness and delivery method of the safety reminder appear lackadaisical, we do not find that these developments vitiate the integrity of the investigative process. Claimant was provided a fair and impartial hearing.

Rule 193 which is at issue here, reads, "The red or blue flag, red or blue disc, or red or blue lights for the above protection must be placed between the rails at least thirty feet from the end of the car nearest to the switch of the track requiring protection, but always inside of the frog clearance point of such track. In case tracks have switches at both ends, this protection must be provided at both ends of the tracks." It is an explicit and well known railroad safety rule.

In the instant case, Claimant was charged with an infraction that was fraught with potential danger to other employes and property. It was to be sure inadvertent, but it could have been harmful.

There is no question, after examining the pattern of events, that Claimant, at the very least, technically violated this rule. But, it is the result rather than the intent that undergirds the intended application of safety rules. Claimant was duty bound after he left the foreman's office to re-check the cars before pulling the car on the west end. If he had performed this inherently routine precaution, he would have noticed the red flag on the freight car coupler. In fact, he acknowledged at the investigation that he knew, "it was a violation of a rule of the company".

This Board has consistently held that it would not substitute its judgement for that of the Carrier when it came to disciplinary actions, unless it could be shown by solid probative evidence that the decision was arbitrary, capricious, excessive or an abuse of managerial discretion. (See Second Division Award 4001).

On the other hand, this Board has consistently emphasized the importance of progressive discipline to encourage employe rehabilitation.

Balancing these decisional principles within the unique circumstances of this dispute, particularly the non-volitional character of his actions, we feel that the penalty was somewhat excessive. The act was certainly inexcusable, but we believe that a lesser penalty would have sufficed to insure the proper enforcement of Rule 193, deter future violations and serve the commensurate justice required by this offense.

Accordingly, we will sustain Carrier's finding of guilt, but reduce the ten (10) days suspension penalty to three (3) days suspension and order Carrier to reimburse claimant back pay for the seven (7) days lost.

A W A R D

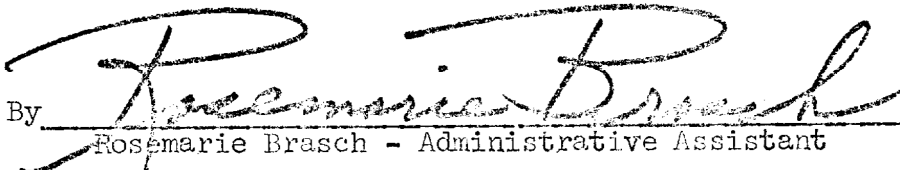
Claim sustained to the extent expressed in the Findings.

Form 1
Page 3

Award No. 7836
Docket No. 7747
2-C&NW-CM-'79

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 7th day of February, 1979.