

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

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Jeremiah Jones, was unjustly dismissed from the service of the National Railroad Passenger Corporation (AMTRAK) effective April 1, 1977.
2. That, accordingly, the National Railroad Passenger Corporation (AMTRAK) be ordered to: 1) have the charge cleared from the record of Electrician Jeremiah Jones; 2) that Electrician Jeremiah Jones be reinstated with all rights unimpaired and reimbursed for net wages lost.

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.

Claimant was dismissed from service on April 1, 1977 following a formal investigation held March 18, 1977.

By letter dated March 14, 1977, Carrier notified Claimant he was to appear at a formal investigation scheduled for March 16, 1977. In this same correspondence, Carrier apprised Claimant of the charge against him, which is reproduced in full as follows:

"CHARGE: Your responsibility in connection with your failure to comply with National Railroad Passenger Corporation Rules of Conduct, Rule Y, F, H, and K in part which reads, 'Employees must ...attend to their duties during the hours prescribed...' and Amtrak's Mechanical Department Safety Rules, Rule #1031 E, when at approximately 1:15 a.m., you were assigned to place Train #21's diner and sleeper on standby power, and you allowed a charging line to foul Track #6 without arranging

"for any protection, and charging line subsequently was damaged at approximately 2 a.m. by Train #57. You were then instructed to remove the damaged charging line and replace it with another which was not done while assigned as Electrician, 21th St. Yards, Chicago, IL, March 11, 1977."

As Claimant received the notification dated March 14, 1977 on March 17, 1977, the investigation was rescheduled for March 18, 1977 upon request by the Organization.

Briefly, a review of the record reflects the following surrounding circumstances and events. During Claimant's third shift tour of duty on March 11, 1977 at approximately 1:15 A.M., Claimant received a verbal request from his supervisor to try to get two cars on charge if he could. This request referred to putting Train 21's diner and sleeper cars on standby power. Claimant had at the beginning of his shift been assigned to work Train 21, which was situated on track 7. Claimant was also apprised by his supervisor at the time of the request that Train 57 would be coming in on track 6.

Apparently, because of a limited number of charging lines on track 7, Claimant used a line from track 6 to plug into the diner. In so doing, Claimant ran the line across track 6, thereby fouling track 6. Instead of flagging the track with a blue signal light to protect that portion of the track which was fouled, Claimant, on his way to reparking his automobile at the request of security guards, verbally informed the Yardmaster of the charging line lying across track 6. On his return from reparking his automobile, Claimant's supervisor met him, and apprised Claimant of other work needed to be performed immediately. Both Claimant and his supervisor proceeded to the Coach Yard to check the lights in three baggage cars. After this task was performed, Claimant proceeded back to Train 21 to find the Yardmaster there with a radio and was informed by the Yardmaster that the charging line on track 6 had been run over by Train 57. Claimant then disconnected the line from the power to allow Train 57 to proceed on. At approximately 4:00 AM, following luncheon break, Claimant was directed by his supervisor to put the diner back on standby power and to pick and wrap up the damaged charging line and get it out of the way.

The Board notes in reviewing the record, that the Carrier's and Organization's respective positions relative to the aforementioned surrounding circumstances and events are as vastly different as night and day. The Carrier asserts that Claimant did not perform his assigned duties during third shift on March 11, 1977 while the Organization contends that he did. The Carrier states that Claimant was directed to put the diner and sleeper cars on standby power, while the Organization maintains that said directive was not a directive at all, but rather a conditional request, based on whether Claimant could manage putting the cars on charge in addition to performing his other already assigned duties. The Carrier maintains

Claimant violated safety rule 1031 E when he put a charging line across track 6 without blue signal protection, while the Organization asserts that the Blue Flag Regulations have not been uniformly and consistently applied; that a past practice has developed which allows a fouled track to go unprotected without complaint or redress from supervision until there is an accident. The Carrier contends Claimant was instructed, after the charging line had been run over, to put the diner back on standby power and to remove the damaged charging line and accuses Claimant of not performing either of these tasks at any time during the remainder of his tour of duty, while the Organization counters, by asserting the diner was put back on standby power and that at least a portion of the damaged line was picked up, maintaining the remaining portion was lying underneath Train 57 and therefore not accessible.

Ordinarily the Board would assume the well established posture that it is not in a position to reconcile differences in testimony, primarily because the Board lacks the opportunity to adjudge first hand, the credibility and demeanor of the witnesses. However, in the instant case, the Board notes the record is so substantially replete with controverted testimony and reflects the parties' own respective positions to be so internally inconsistent as to cause this Board to question the substantialness of the evidence. It is not at all clear to this Board that the request to put the diner and sleeper cars on standby power was, in fact, a directive, constituting an order to Claimant. As the Carrier stated in its own rebuttal submission, "... Carrier does not deny that the Foreman's instructions did allow for some latitude and flexibility in the performance of the assignment...." Thus, based on this statement by Carrier, and especially when considered in conjunction with testimony given by Claimant's supervisor, that aside from doing the one particular duty, referring to putting the diner car on standby power, Claimant was performing his assigned tasks, the Board must conclude that Claimant was performing and did, in fact, perform his assigned duties during the third shift on the morning of March 11, 1977.

As to Claimant's having violated Rule 1031 E regarding Blue Flag Regulations, the Board notes this charge to be well substantiated from the record. However, the Board is not fully convinced said rule has been applied and enforced by Carrier with reasonable uniformity for all employees at the location in question. In Second Division Award 6196, Referee Quinn stated: "A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory when the Carrier, (among other things), does not apply and enforce the rules with reasonable uniformity for all employees" (Parenthesis added).

It is therefore the determination of this Board, based on the foregoing analysis, that the assessed discipline of discharge be set aside and that Claimant be reinstated without back wages or other monetary or non-monetary benefits.

In so ruling, the Board directs the following remarks to the Claimant:

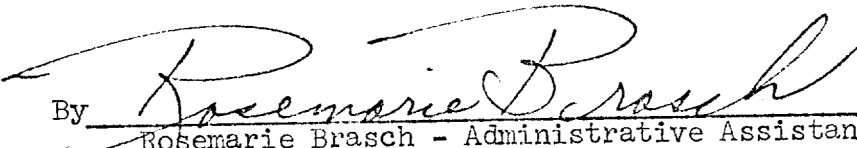
- (1) The Board is cognizant of Claimant's previous work record while employed with the Carrier and hereby expresses its dismay over same and advises Claimant to vastly improve on his performance.
- (2) The Board admonishes Claimant for his part in not complying fully with the Safety Rules and advises Claimant to familiarize himself with said rules and to conscientiously and assiduously follow them at all times in the future.

A W A R D

Claim sustained to the extent indicated in the findings.

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 16th day of May, 1979.