

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

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

Dispute: Claim of Employees:

1. That under the current working agreement Carman John J. Marcisz, Jr. was unjustly assessed a five (5) day deferred suspension by the Carrier on August 6, 1976, as a result of investigation held July 13, 1976, at Chicago, Illinois.
2. That the Carrier be ordered to remove the five (5) day deferred suspension from the service record of Carman John J. Marcisz, Jr.

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 claimant is a Carman employed by the Carrier at Chicago, Illinois, on the Carrier's Western Region where the Carrier facilities include a repair track and extensive inbound and outbound yards. There is also a ramp at Chicago at which truck trailers are loaded on flat cars for shipment to distant points. On May 29, 1976, the claimant loaded and secured a trailer TICC 4967 on car TIX 157171. The car left Chicago loaded with the trailer and traveled to Detroit, Michigan. Prior to arriving at Detroit, the car and trailer were "humped" and made part of train CD-14, allowed to stand in Calumet yard, Chicago, and then highballed to Detroit where the car and trailer were allowed to stand in the yard. The distance between Chicago and Detroit is in excess of 250 rail miles. Carrier officials claim that the trailer was shifted and the hitch was unlocked upon arrival at Detroit. A statement by the General Car Foreman at Detroit was made a part of the record of the investigation in which the General Car Foreman stated that the car in question arrived at their EOFC dock on June 1, 1976 with the B Hitch unlocked.

The trailer on the B Hitch had slipped forward out of hitch, a distance of approximately 3 feet. The General Foreman claimed that the king pin locking indicator was in the unlocked position and that an inspection of the hitch revealed no defects.

The claimant was charged with improper performance of his duties and after the holding of an investigation the Carrier assessed the claimant a five day deferred suspension against his service record, on August 6, 1976.

The claimant alleged that he was unjustly dealt with within the meaning of Rules 32 and 33 of the Working Agreement. At the formal investigation, the claimant testified that the hitch was in fact locked when the car left the yard. The Carrier takes the position that a trailer if properly secured cannot come unlocked in transit and that its position is supported by certain articles in the Organization's Journal.

The Organization contends that the claimant is not responsible for the negligence with which he was charged, pointing out that, among other things, the car had traveled to Detroit, Michigan, and the lack of evidence to indicate that there were no intervening factors. The Organization argues that if the trailer had not been properly secured under the circumstances a mishap would surely have occurred before the arrival of the car at Detroit.

This case appears to be substantially on all fours with a case previously decided by this Board, Award No. 6419, between the same parties. In that case the Board stated:

"In the instant case, the claimant, a Car Inspector, was charged and found guilty of negligence. He was alleged to have failed to properly check whether a trailer was securely locked onto a flat car and held responsible for the subsequent mishap when the trailer fell or rolled off the flatcar. A ten-day suspension of record was assessed against him.

The Carrier put great stress on the alleged infallibility of the equipment used to secure trailers onto flat cars and that, if properly locked, it could not become undone in transit. It avers that the trailer was not properly secured when claimant was supposed to have inspected the car and its contents and only his failure to inspect or follow the proper procedure caused the dangerous misadventure and loss. Disregarded was the fact that the trailer came loose approximately three hundred miles from the Yard where the inspection was to have taken place and the possibilities for intervening forces or factors which might have come into play during the time the flat car traversed the distance from claimant's station to the point where the trailer became disengaged and detrained."

The Board held that the record did not meet the standards of the substantial evidence Rule and found that the discipline assessed could not be held to be just and proper. The Board feels constrained in a case between these same parties to follow its own decision on substantially similar facts. Accordingly, the Board holds that the discipline assessed against the claimant was not just and proper.

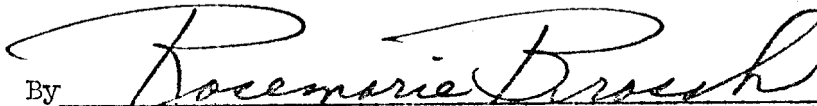
A W A R D

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 20th day of June, 1979.