

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

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That Laborer Willie J. Webb was unjustly dismissed from the service of the St. Louis-San Francisco Railway Company on June 7, 1978, in connection with front truck, Unit 937 being derailed at the East entrance of No. 2 Stall of Lindenwood Diesel Shop on May 16, 1978.
2. That accordingly, the St. Louis-San Francisco Railway Company compensate Laborer, Willie J. Webb, at his pro rata rate of pay for each work day beginning June 29, 1978, until he is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer Willie J. Webb, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Webb an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 claimant, Mr. Webb, was employed as a hostler helper-supplyman at the carrier's Lindenwood Diesel Shop, St. Louis, Missouri.

On the date of the occurrence under consideration, he was performing as a hostler helper. A unit of three locomotives was backing in an easterly direction in order to clear the switch leading into the east end of the diesel shop, No. 1 stall. The claimant was stationed on unit 937 or the east end of the consist. When the unit cleared the switch leading into No. 1 stall, Mr. Webb gave the signal to stop which was properly followed. He lined the switch into No. 1 stall

and signalled a go ahead to the hostler. However, the front trucks of unit 937 were just through the switch which allowed movement into stall No. 2. When the unit started to move into stall No. 1, these trucks derailed because they attempted to move into stall No. 2 in accordance with the alignment of that switch. The claimant noticed the derailment and properly signalled for a wash of the movement, which was executed.

Following contractual notices and an appropriate hearing on June 1, 1978, the penalty herein complained of was assessed on June 7, 1978.

The carrier's decision relies upon the General Rules Agreement between the parties and in particular Rule B which reads in pertinent part:

"Employees who are negligent or indifferent to duty ...
will not be retained in service."

It is clear that the switch settings were the claimant's responsibility and that the derailment was caused by the No. 2 switch. In defense the claim is made that this particular switch had given the claimant trouble in the past. The claimant stated that on at least one occasion he had thrown switch No. 2 only to have it plop over for no reason and he had to throw it again. It is interesting to note that he did not check the switch after the derailment as he left for other duties in connection with two trains he had to supply. However, the hostler testified that after the incident he noted that the No. 2 switch was lined up for the No. 2 stall. In addition, the general foreman and an additional employee check the switch and found it in good working order and lined up for No. 2 stall.

The preponderance of evidence indicates that the claimant was negligent in his duty to assure that all switches were properly aligned before giving the hostler the signal to move the consist. Accordingly, the rules were violated and some form of correction was valid.

In determining the punishment, the carrier points to the claimant's personal record with the company. While it is true that such matters are not germane to the determination of guilt or innocence in a particular charge, they may be reviewed in determining the applicability of the penalty assessed.

The record indicates that the claimant had been discharged after a hearing on two other occasions during the last five years. He was returned to the service of the company on a leniency basis on both occasions. In addition, there were other matters of a less serious but troublesome nature in the file. It could not be considered an exemplary record. In accordance with the foregoing and the entire record, this Board finds that the rules were violated and the action of the carrier did not constitute harsh and unjust treatment.

A W A R D

Claim denied.

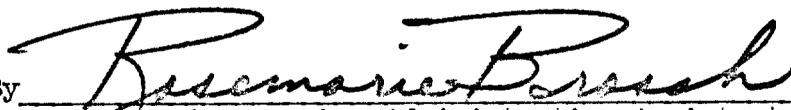
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Award No. 8274
Docket No. 8151
2-SLSF-FO-'80

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 19th day of March, 1980.