

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman 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 under the controlling Agreement Carman R. Sanders was unjustly assessed a five (5) day actual suspension on March 14, 1977, as a result of investigation held February 10, 1977, at Chicago, Illinois.
2. That the carrier be ordered to remove the five (5) day actual suspension from Carman R. Sanders' service record, compensate him for all time lost account unjust discipline, make him whole for all seniority rights and all other rights and privileges he would have received had he not been unjustly assessed the five (5) day actual suspension.

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.

On February 4, 1977, Assistant Car Foreman Preiss filed charges against the Claimant for "... improper performance of duties in that trailer XTRZ 279670 loaded and secured by you on February 1, 1977 on the "B" hitch of car TEX158751, hitch, unlocked and defective (sic)".

Claimant was properly notified of charges, hearing date, and his right to witnesses. Later, the Claimant was to charge that many of the Carrier's exhibits introduced as evidence were illegible and Claimant was unable to determine if they were factual.

The Board, too, is unable to read or decipher many of the xerox photocopy exhibits offered into evidence at the hearing. However, the charges as to a specific car and trailer locking device not being properly secured are clear in the charge letter and were adequately specified at the beginning of the investigative hearing on the property. Two legible written documents offered into evidence were, 1), the Charge Sheet, made out by the following shift

foreman which clearly states that the car in question was improperly hooked to the trailer, and, 2), a "Daily Log of Loaded Trailers", filled out and signed by the Claimant which clearly lists the car in question as having been loaded by Claimant.

The only possible credible reason offered by Claimant at the hearing as to how the error in question might conceivably have been made was that the Claimant was working at the time in a snow-storm at near zero temperatures.

It is the judgment of the Board that there is quite substantial evidence on the record in this case indicating that the Claimant was well informed as to proper hooking procedures, and that he was, indeed, the employee responsible for the mis-hooking of the car and trailer in question. Adverse weather conditions are, of course, nothing more than an occasionally unfortunate condition of work, and do not in this instance constitute an excuse for inadequate work performance.

Given the potentially severe consequences of Claimant's oversight as substantiated in this record, it is the judgment of the Board that the five (5) day suspension disciplinary penalty meted out to Claimant does not constitute inappropriate, arbitrary or capricious discipline by Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of June, 1980.