

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen & Oilers  
( Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Paul R. Dees, hostler helper, Havre, Montana, was unjustly dealt with when suspended for a period of ten days of service from the Burlington Northern, Inc., on March 30, 1979 through April 8, 1979.
2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. Paul R. Dees for all time lost at the pro rata rate and any reference to this incident stricken from his record.

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 working as hostler helper with hostler W. L. McLain. Following an investigation held on March 12, 1979, to determine "responsibility in connection with sideswipe damage to Unit BN 6433 on wash rack track and BN 6434 on No. 1 track east of Diesel Shop about 9:50 P.M., March 4, 1979 at the Havre Diesel Shop, Havre, Montana", claimant was suspended from the service for ten days from March 30, 1979, through April 12, 1979 and entry of censure placed upon his personal record.

A copy of the transcript of the investigation conducted on March 12, 1979, has been made a part of the record. We have reviewed the transcript and find no support for the allegation of impropriety by the conducting officer. While an allegation of impropriety was made by the Local Chairman of the UTU at the beginning of the investigation, no evidence was introduced to support such allegation.

The rather extensive record indicates that on the date involved, the claimant was directing the coupling of Unit BN 6433 to BN 1531, located on the wash rack track east of the Diesel Shop at Havre, Montana. At approximately 9:50 P.M., after the coupling was made, with the claimant standing in the area between

Units 6433 and 1531 to observe whether a proper joint had been made, BN 6433 moved westward to stretch the joint. In doing so, Unit 6433 sideswiped the west unit, BN 6434, of a three unit consist, which had just come out of the Diesel Shop and was proceeding eastward onto the running lead track. Both units were substantially damaged. The claimant and hostler W. L. McLain, who was operating Unit BN 6433 were held responsible for the sideswipe. As we understand claimant was disciplined on the ground that he was not in the proper place, on the point, when the movement of Unit 6433 was made.

In the investigation, the General Foreman Locomotives, on questioning by the claimant stated:

"Q. First, in these instructions, where is the hostler helper suppose to stand when he stretches the joint?

A. The instructions for a hostler helper?

Q. Yes, for stretching a joint, where is he standing at?

A. Well, you'd have to be on the side of the engineer or fireman and you'd have to be back at the draw bar knuckle that you are stretching at."

As the hostler helper was in the proper location to observe the stretching of the joint, and the movement in stretching the joint was the cause of the sideswipe, we do not consider it proper for claimant to have been disciplined for not being on the point when the movement of Unit BN 6433 was made.

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 9th day of December, 1981.