

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in violation of the controlling agreement did improperly and unjustly discipline Carman J. P. Johnson by removing him from service effective May 30, 1978 for a 30 day actual suspension without pay as result of a hearing on March 31, 1978 for alleged violation of Safety Rule 47.

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to: Make Carman J. P. Johnson whole, restored to Carrier service with all seniority rights, vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired during such time as he was kept out of service.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company compensate Carman J. P. Johnson for all lost wages during such time as he was unjustly held out of service.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company reimburse Carman J. P. Johnson for all losses sustained account loss of coverage under health, welfare and life insurance benefits during such time as he was held out of service.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company pay Carman J. P. Johnson interest at the 6% rate per annum on all lost wages.

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 January 21, 1978 at approximately 1:15 A.M., while the claimant was classifying freight cars on track 16 in the "C" Yard of Carrier's Classification

Yard at Bensenville, Illinois, a switch crew entered the west end of said track and began coupling the cars for a westward movement. The sudden movement of the cars caused the claimant to fall off one of the cars he was classifying sustaining an injury. The claimant was charged with failure to properly protect the track he was working by putting a blue light on the west end of the cars and locking the switch points on the west end of track.

The claimant was charged with violating Rule 47 of the Company's safety rules on January 21, 1978 when he failed to display a blue light on the west end of track 16 C and lock the switch points to prevent moving equipment from entering the track on which he was performing his assigned duties.

While there exists a conflict in testimony regarding the display of a blue light, there exists no dispute regarding the locking the switch points. The Claimant admitted that he did not lock the switch points for the reason that the points were "frozen". He testified that he did not notify anyone of the situation even though he was cognizant of the fact that according to the Blue Flag Safety Rules, the switch points must be locked before working on same.

Safety rules are promulgated and enforced to promote safety. When safety rules are violated, the offender places himself in a very vulnerable position. The Claimant, in the instant case, found that out when he failed to take positive action in protecting himself against the risk of moving equipment entering the west end of 16 C.

However, it appears that the Carrier's degree of disciplinary action was not reasonable in relation to the offense. This Board finds that the penalty given to the Claimant as a corrective measure was excessive. As stated in Second Division Award No. 6600 (Schedler):

"It appears to this Board that there must be some established practice showing a reasonable relationship between discipline assessed for negligent injuries and that these penalties would bear some relationship to the frequency of injuries and the seriousness of the injury."

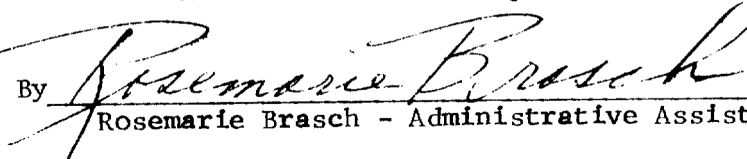
Therefore, we will reduce the suspension to fifteen (15) days.

A W A R D

Claim sustained in part.

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 10th day of March, 1982.