

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (International Brotherhood of Fireman and Oilers
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Ralph G. Pridgeon, hostler helper, Marshalltown, Iowa, was unjustly dealt with when suspended for a period of fifteen days following hearing held on December 19, 1978.
2. That, accordingly, the Chicago and Northwestern Transportation Company be ordered to compensate Mr. Ralph G. Pridgeon 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 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.

Claimant R. G. Pridgeon is a Laborer in Marshalltown, Iowa, on the 11:00 p.m. to 7:00 a.m. shift. On November 10, 1978, a four-unit consist arrived at the service track. Claimant re-fueled three of the units. He did not refuel the fourth, since the fuel gauge indicated that it was full. The next morning, the unit that was not fueled was assigned on a local freight. The unit ran out of fuel and had to be fueled on the road. This caused the train to be delayed. Together with the Foreman on the job and the Hostler, claimant was charged with failure to service properly and inspect the unit. All three men were found guilty and assessed the same discipline. Claimant was given a fifteen (15) day deferred suspension, which he was later required to serve.

The Organization argues that the fuel gauge on the diesel unit indicated that there was fuel and that therefore Claimant did not fuel it. It also argues that the unit sat on the service track from 2:30 a.m. to 11:00 a.m., when it went out. The employes on Claimant's shift did not dispatch the engine; the day shift employes did. It was their responsibility to check the engine out also.

Carrier simply argues that one should realize that if three units out of a four-unit consist require fuel, the fourth will most probably also need fuel. Even if one fuel gauge indicated that it was full, the other gauges would have to be checked under such conditions. If claimant would have used good railroading sense, the incident could have been avoided.

This Board has thoroughly reviewed the record of this case and finds that Carrier has not carried its burden of proof. The record reveals that the fuel gauge on the unit that is normally used as an indicator by the employees on the service track showed that the tank was full, even though it was not. That point is corroborated by two witnesses and supported by a locomotive inspection report submitted by the Engineer of the local freight involved. The record also reveals that the unit went out on the day shift, not on Claimant's shift. Given these facts, it is unreasonable to hold Claimant responsible for the unit running out of fuel.

Carrier has not demonstrated that any rules or regulations were violated. It has not showed that any established procedures were not followed by Claimant. It has failed to prove that Claimant's assumption that the unit did not need fuel was anything but reasonable. The gauge indicated that the unit was full. Given the pressures of the job and the need to get the units serviced and out as scheduled, it is reasonable to conclude that an action would not be taken if there was no indication that it was required.

This Board is mindful of its responsibility as an appellate body and of its duty not to "second guess" Carrier officials in discipline cases. It does, however, also have an obligation to set aside discipline when the record presented does not support it. We so find in this instance.

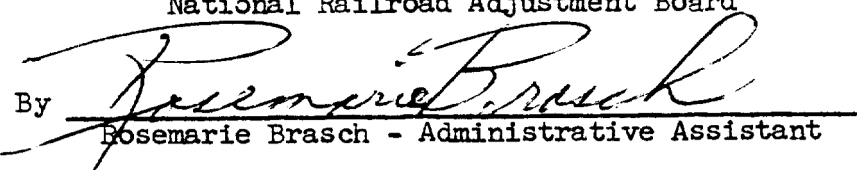
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.