

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 Firemen and Oilers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Don Heckel, hostler helper, Havre, Montana, was unjustly dealt with when suspended for a period of ten days of service from the Burlington Northern, Inc., on April 16, 1979 through April 25, 1979.
2. That, accordingly, the Burlington Northern Inc. be ordered to compensate Mr. Don Heckel 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 is a Hostler Helper employed by Carrier at Harve, Montana. He was suspended for ten days when a two-unit consist operated by his Hostler rammed the doors of the Search Building at the Harve Facilities. Both the Hostler and Claimant were charged with failure to comply with the following notice:

"MECHANICAL NOTICE: 2-79

HOSTLERS AND HOSTLER HELPERS:

When handling locomotives at the Harve Diesel Shop, movement of locomotives must come to a complete stop ten (10) feet in advance of the Diesel Shop or Search building doors.

It will be determined by the hostler and hostler helper that the way is clear for a safe movement into or out of the buildings before proceeding.

H. J. Bell
Asst. Supt. Mechanical"

A hearing was held in the matter. Both the Hostler and Claimant were found guilty as charged and assessed a ten-day suspension.

The Organization has progressed the instant claim alleging that Claimant has been arbitrarily and capriciously penalized for an action that he did not commit or contribute to and over which he had no control.

Carrier argues that Claimant was responsible for making sure that the consist was moving at a controllable speed and to give signals to the Hostler in sufficient time to allow him to stop ten feet short of the doors. The engine did not stop; it hit the doors. Therefore, Claimant is guilty of not giving the proper signals to stop the train on time.

A careful review of the record of this case reveals that its pertinent facts are almost identical to those present in Award No. 8840. That decision, in which we sustained the claim, involved the same parties and similar incident at the Harve Shops. In that case we wrote:

"Based upon our study of the investigation, particularly the testimony of the hostler as to the signals given by the claimant, we would have to speculate that the stop signal was not timely given to support discipline against the claimant. We cannot support discipline based on speculation or conjecture. While it is unfortunate that the accident occurred as it did, at the same time we find that the Carrier did not present the substantial evidence required to support discipline against the claimant."

In the instant case, the record clearly establishes that Claimant gave the proper signals in a timely manner to the Hostler. We find no probative evidence in the record on which to support his discipline. Our uneasiness over speculating about the actions of the Claimant in Award No. 8840 is present in this case as well. This Board is fully aware of its obligation in reviewing discipline imposed by Carrier. We are not anxious to substitute our judgment for that of Carrier officials. We do not, however, support Carrier's action in this instance and we are compelled, given the facts of this record, to sustain the claim.

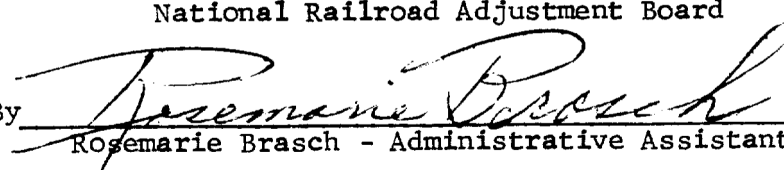
A W A R D

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.