

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Milwaukee-Kansas City Southern Joint Agency

Dispute: Claim of Employees:

1. That the Milwaukee-Kansas City Southern Joint Agency violated the controlling agreement and the Railway Labor Act when it suspended Carman C. V. Foreman and Carman Apprentice R. C. Dollins from September 29, 1980 through October 28, 1980.
2. That the Milwaukee-Kansas City Southern Joint Agency be required to pay C. V. Foreman and R. C. Dollins their proper pro rata rate for each day lost, commencing September 28, 1980 and continuing through October 28, 1980 crediting each day's pay to a daily date.
3. That all reference to this incident be removed from the record of C. V. Foreman and R. C. Dollins.

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.

Suspension of the Claimants occurred on the basis of events of September 8, 1980 while they were on duty and under pay. The facts are in dispute as between the two supervisors who allegedly observed them both along a track at the Carrier's East Kansas City facility. One (Claimant Dollings) was purportedly laying down with his head resting on a rail between two cars in a train while the other (Foreman) sat on the rail next to him. According to the Carrier, the train was ready for inspection of its brakes and had been so for about ten minutes. The Claimants purportedly stood up quickly as the two supervisors (Haney and Maple) approached and denied resting on the rail. A hearing was convened for which a 30-day suspension was imposed.

The Organization raises procedural questions that no specific rule was cited in the charge and that the hearing officer (Dudley) served multiple roles in charging and finding the Claimants at fault. We are unpersuaded by such contentions: the record shows a fair hearing was given and that the Claimants were fully aware of the basis for such hearing. As to the merits, we must choose

between the two parties as to whether of not they were laying/sitting on the rail and why the Claimants were in a rest position; there is also a dispute over whether the train was ready for inspection and how long it had been so. The Claimants contend Foreman was examining Dollin's back for an alleged break in a scab occasioned by the healing of an earlier wound. The record shows that neither Claimant raised this point at the time of this encounter and thus undermines the validity of such contention. As to the amount of time that has lapsed while inspection could have and should have ensued, a more convincing argument is made by the Carrier.

Having so concluded, we are obliged to affirm the Carrier's assessment of the suspension which we do without comment on the extent of such suspension.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983.