

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Elgin, Joliet & Eastern Railroad Company

Dispute: Claim of Employees:

1. That Laborer C. G. Edmonds was unjustly disciplined for thirty (30) days, beginning August 25, 1979 up to, and including, September 23, 1979.
2. That accordingly, the Elgin, Joliet and Eastern Railroad be ordered to compensate Laborer C. G. Edmonds for all time lost during that thirty (30) days suspension plus 6% annual interest, with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired. Further that Laborer Edmonds be reimbursed of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service.

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 August 21, 1979, the Claimant was working Hostler vacation vacancy on the 3:00 p.m. to 11:00 p.m. shift, during which he was assigned to service locomotives prior to their departure from the terminal. Locomotives 668-652-666 were coupled in multiple unit, and he proceeded to move them so as to spot each under the fuel/sanding station. After servicing Engine 668, and moving the locomotive consist from its cab, he failed to remove a Blue Flag derail protecting the turntable area. As a result, the No. 1 pair of wheels on Locomotive 666 derailed.

Roundhouse Foreman J. Paul noticed the derail and arranged to have the locomotive rerailed. He discussed the incident with the Claimant and concluded that after failing to remove the Blue Flag derail and running over it the Claimant had attempted to back the locomotive consist North off the derail in question. This movement sheared off several track bolts from the East rail.

By letter dated August 23, 1979, Foreman Paul notified the Claimant that he was suspended for thirty days for his responsibility in the above incident. The letter is quoted in relevant part below:

For your responsibility in running over Blue Flag derail and derailling Locomotive #666, you are hereby suspended from the service of the Elgin, Joliet and Eastern Railway Company for a period of thirty (30) days, commencing August 25, 1979, to and including September 23, 1979.

An investigatory hearing was conducted on September 18, 1979, after which the Carrier concluded that in view of the Claimant's culpability in the August 21 incident and a prior work record filled with numerous instances where he demonstrated carelessness, neglect, and a marked failure to follow instructions, safety guidelines and company rules and regulations, the suspension would be upheld. That decision was communicated to the Claimant in a letter dated September 25, 1979, from G. W. Skully, General Foreman. The letter also included statements to the effect that the Claimant had violated Rule 131, Paragraph B, sub-paragraph 7 and Rule O, Paragraph 3 of the Safety Rules and General Regulations Governing Maintenance of Equipment Employees:

131 Blue Signal Protection

7. On Locomotive Servicing Tracks a blue signal must be displayed at each entrance to the track.

Locomotive speed is restricted to not more than 5 miles per hour within locomotive servicing areas.

Each manually-operated switch, including any crossover switch providing access to the track on which equipment is located, must be lined against movement to that track and secured by an effective locking device. This lock may not be removed except by the class or craft of workmen performing the work.

A derail with a blue signal may be used in lieu of lining and locking a manual switch if the derail is positioned at least 50 feet from the end of the rolling equipment to be protected. When a derail is used for protection, the following steps must be taken:

a. The derail must be locked in a derailling position.

b. A blue signal must be placed at or near each locked derail.

c. A blue signal must be attached to the controlling locomotive at a location where it is readily visible to the operator at the controls of that locomotive.

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3. Employees will be held responsible for knowledge of and compliance with bulletins and/or other instructions posted, before commencing work.

In the same letter the Claimant also charged with violation of Superintendent Motive Power R. K. Wilder's Bulletin Order No. 2, which specifies the procedure to be followed in providing blue signal protection to workmen inspecting, testing, servicing and repairing rolling equipment. It is quoted in pertinent part below:

A locomotive may not be moved onto or off a locomotive servicing area under the exclusive control of mechanical forces, unless the following measures are taken:

B. To move a locomotive off a servicing track, the blue signal must be removed from the controlling locomotive to be moved and from the area departure switch or derail, and the switch or derail lined for movement before the locomotive is removed from the track.

A locomotive protected by blue signals may be moved on track within the designated locomotive servicing area under the exclusive control of mechanical forces after the following measures are taken:

A. All workmen on the track are notified of the movement.

B. The Blue signal is removed from the controlling locomotive to be moved.

C. When the locomotive is operated by an authorized employee under the direction of the employee in charge of the workmen.

None of these three rules were specifically identified in the Carrier's August 23 letter informing the Claimant that he was being suspended for thirty days.

The Organization asserts that the suspension was procedurally unjust, citing Article 33 of the Controlling Agreement:

Article 33 - Discipline

(a) An employe disciplined or discharged will be advised of the cause for such action, in writing. . .

Thus, the Organization argues, the Carrier tried to justify the suspension by adding charges which were not a part of those originally disclosed to the Claimant in the August 23 notice of the investigation.

The Organization also argues that the Carrier failed to meet the burden of proving the Claimant ran over the derail. The derail is designed to place the locomotive on the ground immediately. This fact should cause the Board to discount the testimony of Foreman Paul, who claimed that locomotive #666 was on the ground about 10 ft. ahead of the derail. Besides, if the Claimant had indeed run over the derail, instead of running up on it as he recollects, all six pairs of wheels would have been on the ground.

According to the Organization, what actually happened was this: The Claimant ran up on the derail, noticed the vibration, and backed the locomotive off. He then threw the switch and set the other two locomotives aside. It appeared that it was safe to proceed with locomotive #666, but since part of the rails had been sheared off, the locomotive went on the ground.

The Carrier asserts that the only apparent track damage was the shearing off of several track bolts as a result of the No. 1 pair of wheels on Locomotive 666 going over the Blue Flag derail. Moreover, the Carrier notes, the Claimant admitted during the hearing that he put the engine on the ground (Transcript p. 6) and that is precisely why he was suspended. That infraction, plus the Claimant's work record, collectively led to his 30-day suspension.

Careful study of the record in this matter has led the Board to the conclusion that the Claimant is guilty as charged. Though he claimed that sheared rail caused him to put the locomotive on the ground, the record reflects that no rail was replaced. Moreover, the Claimant himself testified that he backed off the derail after he had run up on it. In concert with a point made by the Carrier in its submission, it seems highly unlikely that after sensing the vibration from running up on the derail the Claimant could have stopped the locomotive consist in time to prevent the front wheels of the first engine from running all the way over the derail. And according to the Carrier, there were wheel marks on ties, tie plates and tie spikes to confirm this.

In response to the Organization's procedural argument, the Board is of the opinion that the Carrier complied with the spirit if not the letter of Article 33 of the parties' Agreement. The Claimant was indeed advised in writing "of the parties' Agreement. The Claimant was indeed advised in writing "of the cause" of the action against him in Foreman Paul's August 23 letter. Though the letter did not contain specific citations of rules allegedly violated, the thrust of the Carrier's charge was the Claimant's putting the locomotive on the ground. The August 23 letter, therefore, should have enabled him and the Organization to adequately prepare his defense. Furthermore, nothing in the three rules identified in General Foreman Skully's September 25 letter differed materially from the essence of the main charge against the Claimant. To be sure, it would have been better for all concerned had the Carrier included a specific statement of the rules allegedly violated in the August 23 letter, but its failure to do so is not of sufficient significance to warrant a setting aside of the Carrier's disciplinary action.

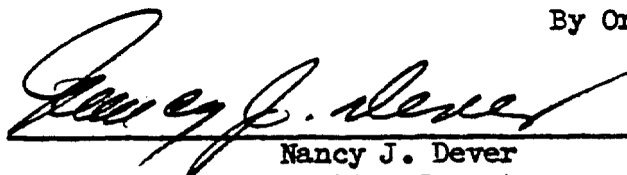
This Board has also evaluated the severity of the Carrier's disciplinary action and concluded that the 30-day suspension was within the range of appropriate penalties, especially since the Claimant's prior work record is replete with warnings, reprimands and suspensions for safety violations.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August, 1983.