

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employes:

1. That the Indiana Harbor Belt Railroad Company be ordered to restore Machinist M. Newman to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.
2. That machinist M. Newman be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 36 of the prevailing Agreement effective January 1, 1947.

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 employes 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 M. C. Newman entered Carrier's service on August 10, 1966, as a machinist at the Gibson Enginehouse. An investigation was held on May 14, 1980, in connection with the charge Claimant violated CT 1886 at 2:00 P.M., May 5, 1980, track #3, in moving Unit 8716 with a blue flag displayed at the right front of the locomotive. Following the investigation, Claimant was dismissed from service.

The Organization asserts the Claimant was a victim of circumstances and was dismissed for an offense for which he was not responsible. Engaged in backing a locomotive off a turntable, he was given the go-ahead by a man sitting in the fireman's seat. No dispute exists concerning the fact Unit 8716 was coupled to Unit 477 which, in turn, was coupled to Unit 9221, the unit Claimant was operating. Unit 8716 had a blue flag displayed on its right front handrail. At the hearing, the Claimant admitted he was guilty of the violation as charged. Claimant attempts to mitigate his responsibility by showing that a laborer, sitting in the cab, told him it was okay to go ahead. This dual failure does not relieve Claimant from his responsibility.

The blue flag rule means that, when a blue flag is attached to a locomotive, it indicates the presence of workmen and the unit must not be coupled or moved without notifying the workmen together with the removal of the blue flag. Regardless of its placement, we find Claimant knew and understood the implications of this safety measure. Claimant was in control of the movement, and his reliance on Laborer Montgomery is an omission which fails to alter his duty. The Board cannot overlook the serious nature of Claimant's actions and the possible consequence of a blue flag violation. Knowing he was going to move a locomotive, he was required to check for a blue flag. Considering the nature of the violation, the Claimant's admission of guilt and his prior poor record, we find the record amply justifies the Carrier's dismissal of Claimant. The Organization's plea for leniency was properly presented to Carrier, and it was denied. The Board will not interfere with this recognized prerogative of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984.