

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the controlling Agreement when Carman R. A. Antalek was assessed a thirty (30) day deferred suspension on May 19, 1981, as a result of formal investigation held on April 7, 1981, at Bellevue, Ohio.
2. That the Norfolk & Western Railway Company be ordered to remove the thirty (30) days deferred suspension from the service record of Carman R. A. Antalek.

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, Carman R. A. Antalek, has been employed by the Carrier at Bellevue, Ohio, since approximately 1950. On March 12, 1981, Claimant was formally charged with violating Federal Law Safety Rule 1302. This charge was based upon an accusation by Trainyard Foreman E. Ware that he observed Claimant coupling air hoses on the Number 2 track in the East Yard without proper "blue flag" protection.

Safety Rule 1302 states in pertinent part:

"1302. BLUE SIGNAL PROTECTION

Note: As used in this rule, the following definitions apply:

Workmen--employees assigned to inspect, test, repair, or service railroad rolling equipment (locomotives and/or railroad cars).

Blue Signal-- A clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

A Switch Providing Access--A switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

- (a) A blue signal indicates that workmen are on, under, or between rolling equipment and that the equipment must not be coupled to or moved except as provided in paragraphs (h) and (i). Other rolling equipment must not be placed on the same track so as to block or reduce the view of the blue signal except on locomotive servicing tracks, car shop repair tracks, or when a derail is used as provided in paragraph (k)(2).*
- (b) When a blue signal is displayed at the entrance to a track, rolling equipment must not enter that track.*
- (c) When workmen are on, under, or between a locomotive or rolling equipment coupled to a locomotive on either a main track or other than a main track, a blue signal must be attached to the controlling unit at a location where it is readily visible to the engineman or operator at the controls of that locomotive. When a blue signal is displayed on the brake valve of the controlling unit, the brakes must not be applied or released.*
- (d) Blue signals must be displayed and effective locking devices must be applied by each craft or group of workmen; they may be removed only by the same craft or group."*

Finally, an investigation was held on the property on April 7, 1981; and as a result thereof, Claimant was found guilty as charged and was assessed 30 days deferred suspension.

The Organization's position is that the Carrier violated Rule 32 of the controlling agreement when discipline was assessed against the Claimant as a result of the April 7, 1981, investigation.

Rule 32 states as follows:

"Should any employee subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, he shall have the right to take the matter up with his foreman in person or through the duly authorized local committee within ten days. If unable to arrive at a satisfactory settlement with the foreman, the case may be taken to the highest local officials in the regular order, preferably in writing. If stenographic report of investigation is taken, the committee shall be furnished a copy. If the result still be unsatisfactory, the employee or the duly authorized general committee shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters, in their respective order, and conference will be granted within ten days of application.

Should the highest designated railroad official or his duly authorized representative, and the duly authorized representative of the employees fail to agree, the case may then be handled in accordance with the Railway Labor Act.

All conferences between the local officials and local committees to be held during regular working hours without loss of time to committeemen. Prior to assertion of grievances as herein provided and while questions are pending, there will neither be a shutdown by the employer nor a suspension of work by the employee."

Both the Organization and the Carrier agree that much of the testimony at the investigation was in conflict. However, the Organization contends that due to the conflicting testimony, the Carrier failed to prove the Claimant's guilt.

The Carrier argues that it is within its right in making its own determination of the veracity of the principals and that it is not within the jurisdiction of this Board to substitute its judgment based upon probative evidence.

This Board, after a thorough examination of the record, finds that the record is adequate to support the penalty assessed against the Claimant. While much of the testimony is in conflict, the Carrier was well within its right in making its own determination of the veracity of the principals, and it is not within the jurisdiction of this Board to substitute its judgment for the Carrier's as long as that judgment is based upon probative evidence and there is no showing of arbitrary action. This has been the position of the Board over the years.

For example, Second Division Award No. 1809 states:

"There was direct conflict in the evidence. The Board is in no position to resolve conflicts in the evidence. The credibility of witnesses and the weight to be given their testimony is for the trier of the facts to determine. If there is evidence which supports the action of the carrier, and it appears that a fair hearing has been accorded the employee charged, a finding of guilt will not be disturbed by this Board unless some arbitrary action can be established. None is shown here. Reasonable grounds exist to sustain the determination of guilt made by the carrier."

While there was conflicting testimony adduced at the investigation, there was substantial evidence to reasonably support the decision of the Carrier that the Claimant was working on Track Number 2 with improper flag protection in violation of the rules. Under such circumstances, this Board may not substitute its judgment for that of the Carrier.

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Award No. 9905
Docket No. 10026
2-N&W-CM-'84

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 9th day of May, 1984