

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated Rule 29 of the Controlling Agreement when carman D. L. Justus was unjustly suspended for a period of three (3) days as a result of investigation held on January 13, 1984.
2. That accordingly the Washington Terminal Company be ordered to reinstate Mr. Justus with compensation for his net wage loss, seniority, and vacation rights unimpaired, and made whole any loss due to health and welfare benefits not continued.

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, D. L. Justus, was employed by the Carrier on July 25, 1979. Since his employment with the Carrier, the Claimant has maintained a clear record. Claimant was suspended for three (3) days as a result of an investigation held to determine whether he failed to properly perform his duties resulting in an Amtrak train's failure to stop on service application of brakes at the Baltimore-Washington International Station. Claimant was present, and duly represented by the Organization at the investigatory hearing.

Claimant's case has been thoroughly reviewed by this Board. The witnesses, issues, facts and incidents in the present appeal are virtually identical to the companion case, Award 10262, save and except that Claimant initially inspected the head end of the train. In addition, both Claimants double-checked the work of each other for the entire length of the train.

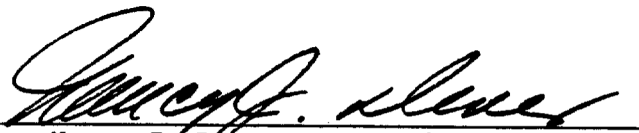
In this Board's opinion in the companion case, Award 10262, we set forth facts and rationale for sustaining the claim in accordance with the findings. A close review of the record here indicates a similar failure by Carrier to prove by circumstantial evidence Claimant's culpability. A repetition of that opinion would serve no useful purpose, and its rationale is equally applicable to this case. Claimant shall be compensated for his net wage loss, if any, resulting from said suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1985.