

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

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

Dispute: Claim of Employes:

1. That the N&W Railway Company violated the Controlling Agreement of September 1, 1949, as subsequently amended, when on August 25, 1982, Car Repairer J. L. Chittum, was given a formal investigation resulting in an unjust assessment of thirty (30) day deferred suspension against his personal record. (Exhibit "C-1")
2. That the investigation was improperly arrived at, and represents unjust treatment within the meaning and intent of Rule No. 37 of the Controlling Agreement.
3. That because of such violation and unjust action, the Norfolk & Western Railway Company be ordered to remove thirty (30) day deferred suspension from J. L. Chittum' (sic) personal record, and not be used in determining any future discipline.

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.

J. L. Chittum, employed by the Norfolk and Western Railroad Company, received a thirty-day deferred suspension for failure to place a blue signal at or near the switch at the west end of Big Hopper, Track 13, August 4, 1982 -- an alleged violation of Blue Signal Protection Safety Rule 1302. During the formal investigation, the Hearing Officer utilized a tape recorder, but refused to allow the Organization to record the proceedings on their machine.

Mr. Chittum, working that day as a Car Inspector, conceded that he had been instructed to lock up Track 13 which had a train on it. He placed a lock on the switch, but did not put a blue signal at or near the switch at the west end of the Track. He contended that blue flags, however, kept at the east end of the Switchman's shanty in the yard were not there and that none were otherwise available. Blue flags were subsequently brought to and placed in the yard.

Claimant admitted that he did not notify Management of the lack of blue flags, nor make any effort to request one or try to obtain a flag from another part of the yard. Another Carman had properly placed a blue flag at the switch on the east end of Track 13.

Claimant admitted the Rule violation. His contention that his conduct was not culpable because of lack of blue flags is without merit in view of the lack of effort he made to find flags or promptly report their absence. He left the switch unprotected.

There is sufficient evidence in the record to support the Rule violation finding. Furthermore, the use of a tape recorder by the Hearing Officer to record the investigation does not affect the fairness of the proceedings and is not restricted by the Agreement (Second Division Awards 9685, 8451, 9969). Neither did the refusal to allow Claimant's representative to use a recorder prejudice Claimant's presentation. (Fourth Division Award 3754)

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1985.