

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10368
Docket No. 10553
2-N&W-CM-'85

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
(
(Norfolk & Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the Controlling Agreement of September 1, 1949, as subsequently amended, when on August 27, 1982, Carmen H. W. Wagner and W. W. Adrian was given a formal investigation resulting in unjust assessment of thirty (30) days deferred suspension against their personal records, effective, October 4, 1982.
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 and Western Railway Company be ordered to remove the thirty (30) days deferred suspension against their personal records.

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.

On the morning of July 10, 1982, at Carrier's Kenova Shop Track, Kenova, West Virginia, two yard locomotives broke away and ran into another unit sitting in the foul of the switch of the diesel runaround track. Extensive damage estimated at \$8,000.00 was done to two of the locomotives. After a lengthy investigation on August 27, 1982, each Claimant was assessed a thirty (30) day deferred suspension.

Carman W. W. Adrian worked the 3:00 p.m. to 11:00 p.m. shift at Kenova, during such time he serviced locomotives N.W. 553 and N.W. 1348. Carman Adrian turned these units over to Carman Wagner who worked the 11:00 p.m. to 7:00 a.m. shift. Carman Wagner shut down both N.W. 553 and N.W. 1348 sometime after 11:00 p.m. on the evening of July 9, 1982.

The Organization argues that the Claimants received unjust treatment within the meaning of Rule 37 in that the Hearing Officer was not an impartial factfinder. The Organization suggests that this bias is revealed by both the nature and form of the Hearing Officer's questions during the course of the hearing. Further, this Board is asked to find that the two alleged visits to the Kenova yard by the Hearing Officer, in addition to hearsay reports from anonymous employees that the guilt of Claimants and their discipline had been predetermined, all resulted in denial of a fair and impartial investigation. The Carrier argues that this Board lacks jurisdiction as the claim was not properly presented on the property, or has in fact been abandoned and a new claim has been submitted to this Board.

In addressing the procedural issue, this Board finds that the Carrier's argument of procedural defect is not supported by the record. The claim as presented to this Board contains the same reference to Rule 37 of the controlling Agreement as does the initial claim on the property. It is clear that the Organization has properly pursued the claim that these Claimants were disciplined without a fair hearing, and the appeal is properly before this Board.

There is no support for the Organization's contention that the Hearing Officer was biased, or the investigation not impartial. A careful review of the six-hour hearing reveals full opportunity by the Claimants and their representative to present evidence on their own behalf, and to cross-examine all witnesses against them. This Board finds that the extensive hearings afforded Claimants complete due process. A claim of bias by anonymous employees of the Conducting Officer is an insufficient basis for disqualification. There is no evidence in the record that the Hearing Officer had a personal bias or prejudice concerning either Claimant, or personal knowledge of disputed evidentiary facts involved in the proceeding.

The Organization contends that the Carrier failed in its burden of proof. The Carrier's supervisory gangleader and charging officer testified that immediately after the accident he examined the two runaway units, and that neither unit had a hand brake applied. Additional testimony by a Carmen who moved one of the two units which broke away shortly after the crash confirmed that the hand brake was not applied to Locomotive No. 1348, that the hand brake on Locomotive No. 553 did not have to be released to move the engine, and that when he did set the hand brake on No. 553, he was able to take up approximately nine notches on the chain. The hand and air brakes on both No. 1348 and No. 553 were tested and checked by locomotive personnel two (2) days after the accident, and were found to be in proper working condition.

Safety Rule 1146 of the NW Safety Rules and Rules of General Conduct provides in pertinent part:

"1146. When placing a locomotive in an enginehouse or service facility or before leaving it unattended for any reason, employees must see that the throttle is in idle position, the reverser in neutral position, the generator field switch open and the locomotive anchored sufficiently to prevent movement." (Emphasis supplied).

In addition, a bulletin notice at the Kenova Shop Track dated July 24, 1981 stated:

"Attention all concerned: When shutdown on locomotives at Kenova, all hand brakes must be set on each and every unit. All other units left running must have sufficient hand brakes set also to hold units in case of unit shutdown where units are unattended. Office of General Foreman, Kenova, W. Va., Clifford Hunt, General Foreman." (Emphasis supplied)

Claimant Adrian testified that he only tied a hand brake up on locomotive No. 1348. He claimed that was the customary practice when both units were running. Claimant Wagner denied failing to tie up the hand brakes on both units, but admitted that if the hand brakes were properly tied up it would not be practical that the two units would have rolled out.

The Board finds that the Carrier has met its burden of proof. The record contains sufficient, credible evidence that Claimants failed to properly perform their duties. While the thrust of the Organization's defense is that handbrakes are insufficient to hold units in place after air brakes leak off due to the grade in the Kenova yard, there is no evidence to support this contention. Evidence of prior roll-outs without more, does not lead to the conclusion posited by the Organization that under the facts and circumstances of this case the hand brakes were properly set as required by the rules, and yet insufficient to hold the locomotives in place.

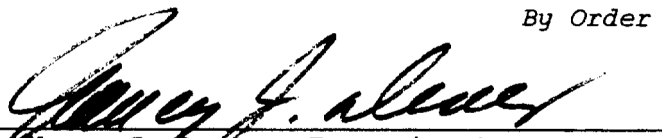
The Claimants are by all accounts good employees who recognize the necessity for sufficient hand brake application to prevent movement by an unattended locomotive on the Kenova Shop Track. However, the rule and bulletin notice clearly mandate the application of sufficient hand brakes to prevent just such an occurrence as experienced in the instant appeal. Therefore, thirty days deferred suspension in these circumstances cannot be said to be so arbitrary, unreasonable or capricious as to constitute an abuse of Carrier's disciplinary discretion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1985.