

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employes:

That the Consolidated Rail Corporation (Conrail) be ordered to compensate Machinist O. Whitsett and otherwise make him whole for all losses as a result of a 30 day suspension and permanent disqualification as a fuel truck driver, in accord with prevailing Agreement dated May 1, 1979.

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.

At the time of the events giving rise to the charges in this case, the Claimant was employed as a Machinist who operated the Carrier's fuel truck at its facility located in Chicago, Illinois. Following a trial that was held on March 16, 1982, the Claimant was assessed a thirty (30) day deferred suspension and disqualified as a fuel truck driver for committing the following offenses: a) Causing damage to fuel truck P 2088 of approximately \$400 and failing to report damage at the end of his tour of duty on February 23, 1982; b) Failure to properly complete Mp 65 fuel truck control reports between February 16 through February 22, 1982, thus making it impossible to account for fuel oil received and dispensed, by and from truck P 2088.

The Claimant indicated that on February 23, 1982 while operating fuel truck P 2088, he applied the brakes and the truck slid into a concrete pole causing damage to the truck. At the time of the accident, he said that there was "some ice on the ground". The Claimant admitted that he did not fill out the required report of the accident at the end of his tour of duty on February 23. Moreover, he did not submit an accident report because of an "emergency call". The Claimant also admitted that he failed to notify his Supervisor of the damage to the truck before he left the Carrier's property before the end of his tour of duty.

Turning to the Claimant's failure to properly complete fuel truck control reports, the record discloses that between February 16 through February 22, 1982, 7905 gallons of fuel were placed in truck P 2088; however, 8815 gallons of fuel were removed from the truck during this period. Thus, the control reports do not account for 910 gallons of fuel that was placed into truck P 2088. Moreover, the meter on the truck indicated that 8944 gallons of fuel was dispensed, thus resulting in a discrepancy of 129 gallons (8815 gallons subtracted from 8944 gallons of fuel). That the Claimant was confused and listed units fueled, "out of sequence", may constitute reasons for failing to properly fill out fuel truck control reports but they do not excuse the offense of improperly filling out such reports. In addition, the record does not warrant the conclusion that listing units fueled "out of sequence" is a "common mistake". Accordingly, the Board concludes that the Claimant failed to properly complete the truck control reports that resulted in an inaccurate tabulation of fuel dispensed from truck P 2088.

Having established that the Claimant committed the offenses contained in the charges brought against him, the penalty assessed by the Carrier must be considered. Approximately three (3) of the fourteen (14) years that the Claimant has been in the service of the Carrier, he has occupied the position of Fuel Truck Operator. During his tenure of service, the Claimant's record includes three (3) offenses, one of which involved his failure to properly fill out the fuel truck control report during November 1980.

Based on the record, the Board cannot conclude that the Claimant is unfit or unqualified to be a Fuel Truck Operator. However, if he does not change his conduct with regard to carrying out his duties as a Fuel Truck Operator, the Carrier will have a range of options at its discretion, including the penalty of disqualification. It is the Board's judgment that the penalty imposed by the Carrier of disqualification as a fuel truck driver is excessive; however, the penalty assessed against the Claimant of thirty (30) days deferred suspension is sustained.

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 10th day of July 1985.