

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Central of Georgia Railroad Company

Dispute: Claim of Employes:

1. That Promoted Student Mechanic D. W. Holman was suspended from service from January 9, 1982 through February 7, 1982 by the Central of Georgia Railroad in violation of Rule 34 of the Agreement.

2. That accordingly, the Central of Georgia Railroad be ordered to compensate Promoted Student Mechanic D. W. Holman for pay lost during this thirty (30) day suspension.

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 were given due notice of hearing thereon.

In December, 1981, the Claimant was employed at the Carrier's facility located at Columbus, Georgia. Following an investigation that was held on December 27, 1981, the Claimant was assessed a thirty (30) day suspension from service for failing to properly perform his duties as a Carman on December 26, 1981 which caused the lading of SOU-525607 to catch fire and burn on Track RP-02.

On December 26, the Claimant used a heating torch to apply heat to a broken freight car ladder. While performing such work, the side of car SOU-525607 became so hot that the lading or paper products ignited resulting in damage to the lading and to the freight car. The Claimant was found to have violated Bulletin No. C-81-61 which provides, in relevant part, that "there will be no burning or welding on loaded cars unless there is a Car Foreman or General Foreman present to personally supervise this work". The Organization contends that Foreman Ledbetter is responsible for the damage to the lading of SOU-525607 since he was present and permitted the Claimant to use a torch on the car.

Under Bulletin C-81-61, which the Claimant was familiar with, it was his duty to ensure that a Car Foreman or General Foreman was "present to personally supervise" the burning work. Since the Claimant acknowledged that the Car Foreman "was not immediately" in his "field of view", no Car Foreman or General Foreman was "present to personally supervise" the work in question. However, there are circumstances which mitigate the offense committed by the Claimant. Foreman Ledbetter had been present (in the work area) earlier and did not inform the Claimant and Lead Carman Swanson that he would be leaving the area. Furthermore, Foreman Ledbetter knew that the car had been derailed and knew what had to be done in order to repair the car. Before the Claimant and Lead Carman Swanson began work on the car, Swanson called Foreman Ledbetter to "find out what he wanted to do with the car". Foreman Ledbetter advised him "to treat" the car "like a derailed car". In response to the query by Foreman Ledbetter whether he and the Claimant were "going to fix the ladder", Lead Carman Swanson replied "yes". These circumstances warrant the conclusion that Foreman Ledbetter should have been present when the Claimant performed the burning job. The dereliction of duty by Foreman Ledbetter resulted in a disciplinary suspension of fifteen (15) days. Foreman Ledbetter was in part responsible for the events which led to the damage caused to the lading and to the freight car on December 26, 1981, and his failure to properly carry out his duties cannot be severed from the Claimant's violation of Bulletin C-81-61. The Board therefore concludes that the penalty of thirty (30) days discipline imposed against the Claimant was excessive. In light of the penalty imposed by the Carrier against the Foreman Ledbetter, the Board believes that the Claimant is to be assessed a twenty (20) day disciplinary suspension.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of September 1985.