

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
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Kansas Texas Railroad Company violated the agreement between the Missouri-Kansas Texas Railroad Company and Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when the Missouri-Kansas-Texas Railway Company unjustly assessed discipline by issuing a fifteen (15) day deferred suspension on December 22, 1982, to Carman R. J. Louviere.
2. That the Missouri-Kansas-Texas Railroad be required to compensate Carman R. J. Louviere in the amount of twelve (12) hours pay at the proper pro rata rate for the time that he lost on October 8, 1982, and December 14, 1982.
3. That all reference to this investigation be removed from personal record of Carman R. J. Louviere.

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.

Upon completion of a formal investigation on October 8, 1982 and December 14, 1982, Claimant was found guilty of a violation of that portion of General Rule D(1) which provides that employees must not be careless of the safety of themselves and others. Claimant was also found to have violated the Uniform Code of Rules and Instructions Governing Display of Blue Signals by Workmen When On, Under or Between Rolling Equipment, effective October 1, 1979.

The Organization's contention that the Claimant faced a vague and imprecise charge is without merit. The Claimant received complete notice of the date, time and place of the alleged violations. The notice of charge contains specific allegations of the substantive offense that Claimant failed to lock a switch while an air test and other work were performed on a particular train.

The Board also finds that Carrier committed no procedural violations in the manner by which the Hearing Officer conducted the investigation. The Organization's representative was a vocal and zealous advocate on Claimant's behalf throughout the formal investigation, and the record contains his strenuous objections which preserved issues for appeal to this Board. There is, however, no support in the record for the Organization's argument that the Hearing Officer exhibited bias toward the Claimant by the order or manner in which witnesses were permitted to testify.

The Organization correctly acknowledges that a formal investigation is not equivalent in all respects to a civil or criminal trial. The Board finds upon review of the entire record that Claimant's rights to due process under the Agreement was sufficiently protected by both the Carrier and the Organization. The notice of investigation and charge was timely, and provided Claimant with adequate opportunity in which to prepare his defense.

The substantive charge upon which this appeal is based is the alleged failure of Claimant to "lock the switch while working and making [an] air test on Train No. 106 on or about 2:00 p.m., September 8, 1982." This charge was fully proven by the testimony of the Claimant himself when questioned by the Hearing Officer:

Q. Was the switch locked?
A. Yes sir it was.

Q. Did you see what Mr. Payne was talking about, was there a lock on there or wasn't there?
A. Yes sir it was locked.

Q. Would you explain?
A. Ricky Ray locked the switch on the south end with the lock off the ice house, then he went to the head end, lock[ed] the switch and put his flags up and then we worked the air on the train. After the brakes were released I went back to the caboose where I met the FRA inspector Charlie Payne [sic] which he asked me if I had locked the switch on the rear end and I told him that I had not. He asked me if I would take care of it from now on. I told him that I would. At this time I did not know that Ricky Ray had locked the switch before he had went to the head end.

- Q. You stated in previous testimony that you did not know that the switch was locked, would you explain?
- A. After I put the blue flag up, I went to the caboose, checked the caboose for flagging equipment, which [sic] I had forgot to lock the switch.

(Emphasis supplied.)

The Board finds that the Claimant had a duty to verify that the south end switch was locked before work was performed on Train No. 106. It was only by chance that Claimant's co-employee had placed a lock on the switch. The safety of Claimant and his fellow employees was placed in jeopardy by the failure of Claimant to verify that the switch was properly locked. His testimony established the fact that he acted in a manner which was careless of his own safety and the safety of his fellow employees.

In numerous Awards, this Board has emphasized the importance of careful adherence to safety rules. Such rules are designed to protect the employees, the Carrier's property and third persons who may otherwise be unintentionally injured in the employee's performance of the Carrier's business.

The Board finds that because of Claimant's unblemished work record with the Carrier since he entered its service in May of 1973, in conjunction with the facts and circumstances of this case, modification of the discipline assessed is required. The Carrier is hereby ordered to reduce Claimant's discipline to a written reprimand which is to be placed in Claimant's personal record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1985.