

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 10595  
Docket No. 10375  
2-WT-CM-'85

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the  
( United States and Canada  
( Washington Terminal Company

Dispute: Claim of Employes:

1. That the Washington Terminal Company violated the controlling Agreement when they unjustly suspended E. N. Butler as a result of investigation held on August 24, 1982.

2. That accordingly, the Washington Terminal Company be ordered to reinstate Mr. Butler with compensation for his net wage loss, seniority and vacation rights unimpaired, and made whole any loss due to health and welfare benefits not continued.

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.

By letter of August 10, 1982, Claimant Butler received notice to attend a hearing to determine his responsibilities, if any, for the alleged failure to properly inspect Amtrak Car 28301 on his August 6, 1982 tour of duty. The hearing was held on August 24, 1982 and reconvened on September 16, 1982, when a Company witness was available. As a result of the hearing, the Claimant was notified that he had been found guilty as charged in that he failed to gauge a wheel which would have identified it as having a thin flange. As a result of the determination of guilt in failing to properly perform his duties, the Claimant was assessed a one (1) day suspension.

The record as developed on property indicates that the Claimant and Car Repairman Royston did inspect Car Number 28301 on August 6, 1982. The Claimant admits that on the day of the inspection he did not have in his possession at that time a wheel gauge to accurately measure and identify a thin flange wheel. While there is discrepancy between the Claimant and the Assistant Foreman as to whether Claimant called attention to any wheel problem and also confusion in the record as to which side the defective wheel was on, there is substantial evidence for a finding of guilt.

The transcript documents that the Claimant inspected the car in question and did so without the proper equipment. If the Claimant was not responsible for the failure to detect the thin flange wheel as he alleged, he had ample opportunity to call his co-worker Royston to document that fact. In the instant case, this Board notes that Royston was present at the hearing held on August 24, 1982 and could have so testified in support of that allegation then or been called at the reconvened hearing. Such key testimony could have refuted the charges. In its absence, the charges appear substantially supported by probative evidence that the Claimant failed to properly inspect the car. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305, U.S. 197, 229).

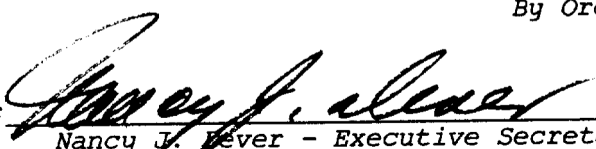
As such, the only issue before this Board is the question of whether the discipline assessed is unduly harsh. This Board finds no evidence of record to find the imposed discipline arbitrary or unreasonable and will not disturb Carrier's judgment in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1985.