

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the terms and/or provisions of the controlling Agreement, when on the date of October 7, 1982 they subjected Claimant, Carman John Pawlowski, Curtis Bay, Baltimore, Maryland, to an unjust, unfair and partial hearing allegedly as a result of a violation of Blue Signal Circular CDT-82, Section 5.01 on the date of September 18, 1982 at Curtis Bay, thusly, further subjecting Claimant to discipline of five (5) calendar days actual suspension commencing with the date of November 5, 1982 through November 9, 1982.

2. That Carrier violated Rule 32 of the controlling Agreement with regard to the instant case.

3. That accordingly, Carrier be ordered to compensate Claimant for all time lost as a result of such arbitrary discipline, including any and all overtime to which entitled during such suspension, etc., that he be made whole as though he were never subjected to such suspension, and that his record be cleared accordingly.

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.

Claimant, John Pawlowski, was employed by the Carrier at its Curtis Bay facility in Baltimore, Maryland. Claimant received a five day actual suspension having been found guilty of a violation of Blue Signal Circular CDT-82, Section 5.01 after a formal investigation on October 7, 1982. The applicable section of the Circular is set forth in companion case, Award No. 10690.

On September 18, 1982, Claimant was assigned the work of oiling journal boxes and coupling hoses on cars situated upon Track No. 19. The Claimant testified at his investigation that he witnessed locks and flags placed on switches at the west end of Track No. 19, although he did not apply them himself. Claimant went to lunch with his co-employee, Robert P. Jones, and left the remaining work of oiling cars on Track No. 19 to be finished by another employee, Vincent Romano. The Claimant testified as to the absence of a flag on the west end of Track No. 19 as follows:

"Q. Mr. Pawlowski, you heard Mr. Teets statement that there was no flag behind you when you were working 19 track, how do you account for that?

A. There was a flag there, apparently the wind blew it down or someone knocked it down?

Q. Mr. Pawlowski, on your way back up the track did you remove that flag?

A. There was no need to because it was laying on the ground."

As to the absence of a lock on the west end of Track No. 19, Claimant Pawlowski stated:

"Q. Mr. Pawlowski, knowing that you had a fellow employee working on the east end of 19 track and you noticed that the flag wasn't up on the west end, as you said 'apparently blew down,' why would you not reapply that important protection?

A. At that time there was no need to because the amount of time me and Mr. Jones walked up 19 gave Romano time to complete the east end of 19, so we took the lock off the west end of 19 and headed for lunch." (Emphasis supplied)

Claimant's case has been carefully reviewed by this Board. The witnesses, facts and issues presented in the instant appeal are substantially identical to those set forth in Awards Nos. 10690 and 10691. An analysis of the record including the testimony of Claimant and the Carrier's supervisors compel this Board to conclude that Carrier met its burden of proof of Claimant's failure to comply with the well-known dictates of the Blue Signal Circular. The rationale contained in our Award No. 10690 for denial of the Claim is equally applicable to this case, and a repetition of our reasoning contained in that opinion would serve no useful purpose.

Form 1
Page 3

Award No. 10692
Docket No. 10594
2-B&O-CM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.