

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
(and Canada
(Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated Rule 29 of the controlling agreement when carman George Jackson was unjustly suspended for five (5) days as a result of investigation held on November 21, 1983.
2. That accordingly the Washington Terminal Company be ordered to reinstate Mr. Jackson 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 employee or employees involved in this dispute are respectively carrier and employees 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.

On August 31, 1983, the Claimant was instructed to report for a hearing on October 17, 1983, on the following charge:

"Failure to properly perform your duties as a Car Repairman in that on August 21, 1983, at the Station, you performed an outside car repairman's inspection on Amtrak Train No. 20. It has been determined that during this inspection you took no exception to a thin flange on Wheel #4 of Car 4601."

The transcript of the hearing disclosed that on August 22, 1983 the General Foreman was notified that car 4601 was removed from Amtrak Train No. 19 at Atlanta, Georgia due to a thin flange on wheel #4. The wheel was shipped back to Washington Terminal, gauged by the General Foreman in the presence of a foreman and two other car repairmen and found to be as reported.

Train No. 20 destined New York City arrived at Washington Terminal on August 21 with 23 cars, five cars were set out at that location and car 4601 was among the five set out.

The interrogation at the hearing was addressed to the inspection of car 4601 inbound on Train No. 20, with some reference being made to an outbound inspection. We know, however, that the car did not leave on Train No. 20.

The Claimant's inspection report of Train No. 20 was introduced and used as a basis for close questioning of the Claimant. Nothing on the front side of the form indicates an inspection of car 4601. The reverse side of the form shows that car 4601 was set out in Washington Terminal but it does not indicate whether it was inspected on the train or inspected after it was set out in the yard.

The Claimant's persistent responses were that he did not know whether he did or did not inspect car 4601 and could not say one way or the other, adding that he would have to see the yard inspection report form; that if he did inspect it he would have put it on the yard form presented at the hearing, otherwise he would have put it on the yard inspection report. He further, testified that he could not remember and that until he could see the yard inspection report he did not know, and could not say.

It is significant to note here that the hearing, while noticed on August 31, 1983, was not scheduled until October 17, postponed to November 17 and finally conducted on November 21, ninety-two days following August 21, the date of the occurrence on which the hearing was based.

The remembrance of an event weeks or months after it occurred is frequently dim and inaccurate and a witness may be confused as to facts. By the lapse of time, precise details may become elusive. The Claimant said so, and he certainly more than hinted that if the yard inspection report were made available he could say whether he did or did not inspect coach 4601. That report should have been made available at the hearing.

As an aside, this question arises: Had he not inspected it on August 21, would he have been responsible for the outbound inspection of the car in its next sequence on Train No. 19 destined Atlanta and beyond? We need not answer that question here for the omission of the yard inspection report for August 21 renders the case against the Claimant flawed to the extent that the claim will be sustained, but only for net wage loss. Any loss due to Health and Welfare benefits not continued is not authorized by Rule 29. Seniority is unimpaired. Vacation rights are governed by the Vacation Agreement.

A W A R D

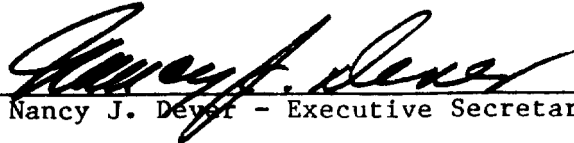
Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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Award No. 10749
Docket No. 10790
2-WT-CM-'86

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 19th day of February 1986.