

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

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (

(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to remove the Formal reprimand from the personal record of Machinist D. Wallace for his alleged responsibility on the charge of "For your responsibility for the sideswipe which occurred between Ballast Regulator UBR1143 and train No. 48 at approximately 9:20 a.m., September 14, 1982 near Schenectady, New York", in accordance with the provisions of Rule 7-A-1 (e) of the prevailing Agreement effective May 1, 1979.

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 waived right of appearance at hearing thereon.

The Claimant, a Machinist with the Carrier and in service since August 26, 1976, was given a letter of reprimand resulting from an Investigation held on September 27, 1982. The Claimant was accused of being responsible for a sideswipe, which allegedly occurred on September 14, 1982 at approximately 9:20 A.M. between Ballast Regulator #UBR 1143 and Amtrak Train #48. The Claimant is specifically charged with a violation of the provisions of Rule 7-A-1 (e).

The Organization argued the transcript contained no evidence that a sideswipe had actually occurred. No damage attributable to such an occurrence could be found on the Ballast Regulator, no one saw the collision, and no evidence of any damage to Amtrak Train #48 was provided. In addition, Train #48 was traveling at an excessive rate of speed in violation of speed signs that had been placed by the Carrier while the track was being repaired. The Organization further argued that the testimony of the Assistant Division Engineer is hearsay and, as such, should be struck from the record.

The Carrier argued the record proves the guilt of the Claimant. Testimony of Assistant Division Engineer shows conclusively that the Claimant admitted the train and Ballast Regulator in question did collide on September 14. The Carrier notes the work could have been performed without fouling the track by moving the Ballast Regulator to another area. Neither the Claimant nor the operator were working in a safe manner. This could have resulted in a bad accident with injuries and substantial damage to Carrier equipment. The Carrier states that, in light of the possibilities, the discipline is most reasonable.

Upon complete review of the evidence, the Board finds the testimony by Assistant Division Engineer to be crucial to the outcome of this case. Mr. Mazzo basically did not testify of his own knowledge but testified as to what other individuals had told him. Most of this kind of evidence is given little weight by referees; however, statements made by Claimants against their own interest is an exception to the Hearsay Rule. Mr. Mazzo testified the Claimant admitted to him that the fourth and successive units of Amtrak Train #48 had struck the edge of the wing of the Ballast Regulator. The Board also notes that on Page 3 of the Transcript the Claimant testified he did not know if the train struck the Ballast Regulator; on Page 4 he indicated that he did not check the damage; and on Page 5 he said he was scared. If in fact the pieces of equipment did not collide or if there was sufficient clearance, why then would the Claimant have indicated he was scared.

The Board finds that the credible evidence in this case would indicate that a sideswipe did in fact occur, and the Claimant can be held at least partially responsible for this unsafe condition. The discipline, the formal reprimand, is most lenient considering the circumstances, and the Board will affirm the Carrier's position and deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April 1986.