

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Richmond, Fredricksburg and Potomac Railroad Company

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Sheet Metal Worker, L. T. Akers was unjustly suspended from the service of the Carrier following an investigation held June 6, 1985.
2. That, accordingly, the Carrier be ordered to make the claimant whole for all pay lost on the dates of July 10, 11 and 12, 1985.
3. Clear claimant's record of any reference to said investigation and discipline rendered as a result of investigation held on June 6, 1985.

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 employees 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.

After hearing on June 6, 1985, Claimant, a Sheet Metal Worker for approximately seven years, was suspended for three days for violating the Carrier's Blue Signal Instructions by fueling locomotives without properly locking switches providing access to the southbound Thoroughfare Track in the Engine Terminal and failing to display blue lights.

The record discloses that on May 28, 1985, Claimant was performing fueling functions. At approximately 2:15 a.m., after beginning to fuel a locomotive, Claimant proceeded to lock out the south end of the southbound Thoroughfare Track. Although blue lights were available to Claimant, blue flags rather than lights were displayed by Claimant during the fueling process.

Initially, the Organization asserts that Claimant was not afforded a fair and impartial hearing. However, an examination of the argument made by the Organization is that it viewed the Hearing to be unfair because it felt that the evidence offered did not support the charge. We view that argument not as a question going to the fairness of the Hearing, but rather one that goes to the merits of the dispute and the sufficiency of the proof.

With respect to the merits, the record establishes that Claimant was fueling locomotives without first having the appropriate switch lever locked and without displaying blue lights during the process. We view the type of work activity performed by Claimant as falling within the scope of the Carrier's Blue Signal Instructions which require the locking of the switch and the displaying of a blue signal. The Instructions require those precautions be taken "any time" employees are performing work covered by the Instructions, which we view as requiring that the precautions be taken prior to commencement of the work activity. As admitted by Claimant, he did not comply with the provisions of those Instructions (which are promulgated for safety reasons) in that he began the fueling process prior to locking all appropriate switches. Further, Claimant displayed flags rather than lights even though lights were available. We therefore find substantial evidence in the record to support the disciplinary action taken. Indeed, this Board has found violations involving failure to comply with similar rules to be an offense warranting dismissal. See Second Division Award 10940.


Under the circumstances presented, we cannot say that a three day suspension was arbitrary or capricious. The fact that Federal Railroad Administration requirements may be less stringent than the Carrier's rule is immaterial to the ultimate outcome of this matter since in this case we are called upon to apply the Carrier's rule and not the federal regulation.

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 23rd day of September 1987.