

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when Carmen J. W. Collins was assessed an actual fifteen day suspension, from April 24, 1985, and ending May 8, 1985, as the result of an investigation held April 9, 1985.

2. That the Missouri-Kansas-Texas Railroad be required to remove all reference to this reprimand from the personal record of Carman J. W. Collins and all reference thereto be obliterated from his personal record, and pay Carman Collins for all time lost commencing April 24, 1985 and ending May 8, 1985 at the proper pro rata rate of pay and to credit each days' wages to the proper calendar date.

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 is a Carman with a service date of February 17, 1970. As a result of charges dated March 22, 1985, Hearing held on April 9, 1985, and by letter dated April 17, 1985. Claimant was assessed a 15 day suspension for violation of General Rule D(2) of Circular No. DP-3 by allowing cars to depart Denison-Ray, Texas on March 16, 1985, without having received proper lubrication and proper train air brake test.

The Organization first argues that the charge is vague and imprecise. The charge alleges that Claimant:

". . . allowed cars MKT 100262 and MKT 100263 to depart train No. 105, Denison-Ray Texas, on or about 4:55 p.m., March 16, 1985, without having received proper lubrication and proper train air brake test. * * * [Y]ou will be charged with violation of Circular No. DP-3 effective September 1, 1983, General Rule D. Employees must not be (2) negligent."

Rule 26 requires that "the employee and his duly authorized Representative will be advised of the precise charges and given opportunity to obtain the presence of witnesses, if desired." Our review of the charge satisfies us that it is sufficiently precise within the meaning of Rule 26 so as to place Claimant on notice of the allegations made against him and to permit Claimant an opportunity to adequately prepare his defense to those allegations.

The Organization also argues that the Hearing Officer improperly asked Claimant certain questions and thereby functioned as a prosecutor. We have examined the record and conclude that the questions asked by the Hearing Officer were solely designed to ascertain the facts and make a complete record and the conduct of the Hearing Officer did not violate Claimant's right to a fair Hearing.

With respect to the merits, on March 16, 1985, after departing the Denison-Ray Yard, cars MKT 100262 and 100263 were inspected by the Master Mechanic after he was notified that Train 105 had a hot box. The inspection revealed deficiencies in lubrication and brakes on those cars. The record shows that Claimant admitted that he did not lubricate cars MKT 100262 and 100263 and further did not properly perform an air brake test on those cars prior to Train 105's departure from Denison-Ray. Claimant's testimony showed the following:

"Q. Did you lubricate MKT 100262 and MKT 100263?

A. No.

* * *

Q. Why did you not lubricate the two cars in question on the inbound on March 14, 1985?

A. I really don't know

* * *

Q. Did you walk the train?

A. No. I drove the train in the pick-up.

Q. Would there not be cars in the cut that you cannot see the brake piston travel from your position in the pickup alongside the train?

A. Yes, there would be.

* * *

- Q. Do you understand that the proper way to make
a terminal air brake test is to walk the
train?
A. Yes."

We are satisfied that substantial evidence exists in the record to support the Carrier's decision to impose discipline. Claimant has, for all purposes, admitted that he performed his job duties in a negligent fashion as charged by the Carrier. Finally, we cannot say that the amount of discipline imposed was either arbitrary, capricious or an abuse of the Carrier's discretion.

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 21st day of October 1987.