

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern Railway Company (Louisiana and Arkansas Railway Company) violated the controlling agreement, particularly Rule 29(1), when they arbitrarily suspended Carman L. C. Williams from service for a period of fifteen (15) days effective October 27, 1986 following investigation held September 16, 1986, Shreveport, Louisiana.

2. That accordingly, the Kansas City Southern Railway Company (Louisiana & Arkansas Railway Company) be ordered to remove the fifteen (15) day suspension from Carman Williams' record and compensate him for all lost wages at eight (8) hours per day at the pro rata rate, crediting this wage loss to a daily rate, and restore his vacation credits and seniority rights intact and make him whole for all Railroad Retirement credits - both unemployment and sickness - and make him whole for Travelers, Aetna and Provident insurance premiums.

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 herein was assessed discipline of fifteen days suspension from service following an investigation conducted at Shreveport, Louisiana, on September 16, 1986, involving the Claimant and members of a switching crew in connection with a sidwripe that occurred about 5:20 P.M., August 28, 1986, when Yard Job No. 12 was in the process of shoving cars to a joint on what is referred to in the record as Track Long No. 2, but instead, cars were shoved through the crossover into the side of L&A Train No. 55,

which was located on what is referred to as Track Long No. 1, resulting in damage to equipment and lading. The Claimant was on duty at the time as 3:00 P.M. Yard Carman at Deramus yard, Shreveport, Louisiana. The head brakemen of the switching crew and the Claimant were assessed suspensions of 90 days and 15 days respectively.

We have reviewed the transcript of the rather lengthy Investigation and find that none of Claimant's substantive Agreement rights was violated. The notice letter of September 2, 1988, constituted a proper charge.

In discipline cases it is the responsibility of the Carrier to adduce substantial evidence in support of any discipline imposed. The "substantial evidence" rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
(Consol. Ed. Co. vs Labor Board 305 U.S., 197, 229.)

(Second Division Awards 6419, 11171, 11180 among others.)

In the present case, the matter of proof as to the responsibility of the Claimant gives us serious concern. In the Investigation, the Claimant was positive that he had properly relined the switch after he finished testing No. 9's fill. He denied having made the statement to anyone immediately following the incident that he must have not lined the switch back. His immediate Supervisor testified that he had no reason to doubt that Claimant properly relined the switch. The Supervisor also stated that 35 minutes had elapsed from the time Claimant finished with No. 9's fill until the accident occurred; that he did not know if anyone else could have improperly lined the switch; and that he did not know for a fact that Claimant was the last person in the vicinity of the switch prior to the accident.

Discipline of any measure must be supported by substantial evidence adduced in the Investigation, it cannot be based on speculation or conjecture.

The Board concludes and holds that the Carrier has not proved the responsibility of Claimant by substantial evidence. The Claim will be sustained, with compensation for Claimant for wage loss, if any, in accordance with Rule 29(1) of the applicable Agreement.

A W A R D


Claim sustained in accordance with the Findings.

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Award No. 11626
Docket No. 11532
89-2-87-2-187

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1989.