

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The Chicago and North Western Transportation Company violated Article V of the Agreement of September 25, 1964, as amended by Article V of the Agreement of December 4, 1975, and Rules 14, 15, 30, 57, 58, 61 and 76 of the controlling agreement on April 26, 1988, when the Carrier assigned Brakeman Chuck Hill to couple air hose on Train CBFRA while a carman was on duty and available but not used.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman James Tunzer in the amount of four (4) hours pay at the straight time rate of pay, amounting to \$56.36, account the Carrier's violation of the Controlling agreement.

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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute but chose not to file a Submission with the Division.

The Organization alleges that Carrier violated the Agreement on April 26, 1988, when a Brakeman was permitted to couple the air hoses on Train CBFRA. There is no dispute in this record that said train was a departure train in a departure yard with Carmen on duty. There is also no dispute that CBFRA departed Council Bluffs.

A full reading of the record convinces us that the Carrier did violate the Agreement. The Organization's proof was met with a letter from a Car Inspector and the inadequate rebuttal by the Carrier. He indicated in pertinent part that:

"When I arrived to work the CBFRA the Brakeman, Chuck Hill, had already coupled the air hoses. When he was asked by the car inspector who coupled the air hoses he responded that he did' (July 25, 1988 letter) and 'When the Car Inspector arrived to work Train CBFRA Brakemen, C. Hill, had coupled all the air hoses' (October 19, 1988 letter)."

Nowhere in this full record is there a clear denial by the Carrier indicating that the Brakeman did not couple the air hoses. Carrier states in its first denial letter of June 27, 1988, that "There was no requirement for Brakeman Hill to couple the air hoses except to prevent delay to his train at Council Bluffs." Carrier continues to argue based upon the Conductor's Work Report and Time Report that no record exists of this occurring and "no compensation was claimed for coupling air hoses." Using the Train Sheet for April 25, 1988, the Carrier points to sequences of events alluding to the improbability that the Organization's Claim has merit. Even so, its strongest and closest rebuttal is of September 22, 1988, when Carrier states that "had the brakeman coupled the air hoses as contended, it was only due to the fact that the Car Inspector failed to do so prior to the train crew coming on duty."

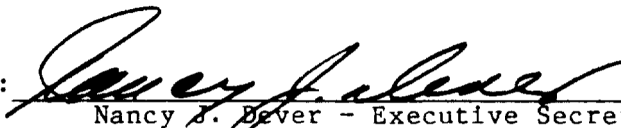
The record shows that when the Car Inspector arrived to prepare Train CBFRA, the Brakeman had already coupled the hoses. Nowhere does the Carrier provide a clear rebuttal or substantially refute the Car Inspector's statement. The Organization established a prima facie case of a violation and the fact stands. Claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.

CARRIER MEMBERS' DISSENT
TO
AWARD 11983, DOCKET 11811-T
(Referee Zusman)

The facts of record refute the Majority's conclusion that "the Carrier did violate the Agreement."

Claimant held a regular second trick assignment and was observing a rest day on Tuesday, April 26, 1988. The alleged coupling of Train CBFRA occurred during the first trick and there were seven other carmen, including the Local Chairman, available to couple the cars.

In Carrier's denial letters of June 27, 1988 and September 22, 1988, we find the following unrefuted facts:

"According to information I have, train CBFRA was ordered on duty at Council Bluffs for 12:01 p.m. on April 26, 1988. That train departed Council Bluffs 12:35 p.m. with 9 cars. The work report completed by the conductor on that assignment does not indicate that air hoses were coupled while at Council Bluffs. Furthermore, a car inspector was on duty as stated in your letter and it is difficult to understand why he did not have the air hoses coupled even before the train crew reported for their assignment at 12:01 p.m. There was no requirement for Brakemen Hill to couple the air hoses except to prevent delay to his train at Council Bluffs." (Emphasis added)

"Therefore, it is obvious that Car Inspector Dirks could not have been inspecting Train PRNPB as he contends and should have coupled the air hoses on Train CBFRA before the crew reported for their assignment. Train CBFRA was ordered at 12:01 p.m. and had the brakeman coupled the air hoses as contended, it was only due to the fact that the Car Inspector failed to do so prior to the train crew coming on duty." (Emphasis added)

The only support that the brakeman did anything, is the statements made by the Local Chairman three months later. Such statements were directly challenged by the Carrier as the work was the Local Chairman's to do prior to the crew of CBFRA reporting for

duty. There is no attempt in this record by the Organization to explain why the assigned carman was negligent in the performance of his duty. Carrier's position was supported by records and work reports. Organization's position is based only on the statement of the one employee who was assigned to do the work.

In Award 11418 involving the same parties, the Board stated:

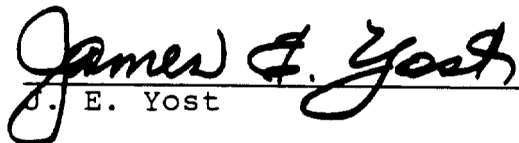
"...the Organization has the burden of establishing a prima facie case with substantial probative evidence."
(Emphasis added)

This Award rewards the Organization for the negligence of its own member .

We dissent.


P. V. Varga


R. L. Hicks


J. E. Yost


M. W. Fingerhut


M. C. Lesnik

LABOR MEMBERS' RESPONSE
TO THE CARRIER MEMBERS' DISSENT
TO
AWARD NO.11983, DOCKET NO.11811-T
(Referee Zusman)

Contrary to the Carrier Members' opinion, the Labor Members' fully agree with the findings that:

"the Carrier did violate the Agreement."

As the facts in the record as quoted in the Award clearly show the Organization clearly proved, with an unrefuted statement from the Carman on duty who happened to be the Local Chairman, that the trainmen did in fact perform the Carman's duties.

In the Carrier Members' Dissent they make the following statement:

"There is no attempt in this record by the Organization to explain why the assigned carman was negligent in the performance of his duty."

In response, there was never mention on the property, of any Carman being negligent in his duties and even if there were, it would not change the fact that the Carrier violated the Agreement.

The Carrier Members' further state:

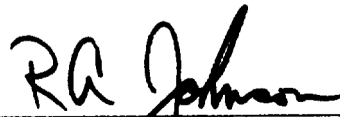
"This Award rewards the Organization for the negligence of its own member."

LABOR MEMBERS' RESPONSE TO THE
CARRIER MEMBERS' DISSENT TO
AWARD NO.11983,DOCKET NO.11811-T

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In response the Labor Members' say "sour grapes", this type of statement only shows signs of warped minds. There is no reward to the Organization nor was there any negligence by any of its members. The Majority following precedent in precedent Awards properly found the Carrier violated the Agreement.

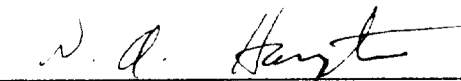
The Labor Members' fully concur with the Neutral's decision in Sustaining this Award.



R. A. Johnson



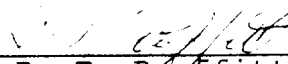
M. Filipovic



D. A. Hampton



R. E. Kowalski



B. T. Proffitt