

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern/Louisiana & Arkansas Railway Company is violative of Rule 29(1) of the April 1, 1980 controlling Agreement and has unjustly dealt with and damaged Electrician D. D. Tyler at Shreveport, Louisiana when they denied him a fair and impartial investigation, resulting in the unjust and improper discipline of a Letter of Reprimand placed in his personal record file on March 13, 1989.

2. That, accordingly, the Kansas City Southern/Louisiana & Arkansas Railway Company be ordered to remove from Electrician D. D. Tyler's personal record all reference to this discipline matter including the notice of investigation and hearing, all subsequent postponements and rescheduling notices, the transcript of investigation, Carrier's Letter of Discipline dated March 13, 1989, and that this matter never be referred to again.

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.

The Claimant was a regular assigned Electrician at Carrier's diesel facility at Shreveport, Louisiana. As part of his duties, Claimant assisted in making engine movements. At approximately 1:45 P.M. on December 28, 1988, the Claimant was on the ground adjacent to Track 71 in the shop area. He gave a signal to the individual operating Locomotive 4359 to proceed north on Track 71. In making the move across a fire lane the locomotive struck a company truck.

Under date of January 3, 1989, the Claimant was notified to attend a formal Investigation. The notice reads in part, as follows:

"Please arrange to be present *** for a Formal Investigation to ascertain the facts and determine your responsibility in connection with a crossing accident on Wednesday, December 28, 1988, at approximately 1:45 p.m. at the north end of 71 track in fire lane next to the sand tank involving locomotive 4359 and company truck 2360 in which truck 2360 was damaged."

Following the Investigation held on February 7, 1989, the Claimant was notified under date of March 13, 1989, that he was found at fault for not properly protecting crossing at 71 track north.

The Organization argues that Carrier violated Rule 29(1) in that Claimant was deprived of a fair and impartial Investigation because the notice of Investigation did not contain a precise charge, but rather the notice implied the Investigation was for the sole purpose of developing a charge. After reviewing the notice of Investigation it is our conclusion there is no basis for the Organization's argument. The notice specifically sets forth the time, date and location of the incident that is to be investigated. The notice indicates the Investigation was being held to ascertain facts and determine responsibility in connection with the December 28, 1988 incident. We believe the notice meets the requirement contained in Rule 29(1) that: "such employee *** be apprised of the precise charge."

The Organization takes exception to the fact that the Supt. of Shops notified the Claimant to attend the Investigation and also conducted the Investigation. The Board has ruled on this argument in numerous Awards. The Board has ruled that the fact an individual acts in a dual capacity does not in and of itself constitute reversible error when it appears from the transcript of the Investigation that the Claimant was afforded a fair Hearing. Our review of the Investigation testimony indicates that the Investigation was conducted in a fair and impartial manner. The Claimant and his representatives were given every opportunity to fully question all witnesses and the other employees who were in attendance at the Investigation.

The Organization argues that the Carrier did not prove that Claimant did not properly perform his duties or that he was at fault; the Organization places the blame on the individual who was driving the truck. We do not agree with the Organization's argument. The Claimant admitted at the Investigation that he gave the signal for the engine to start up and proceed north. The Claimant gave several answers as to which way he was looking at the time of the accident, however, it is evident that he was not alert and properly positioned to observe any vehicular traffic that might be moving west on the fire

lane. The Claimant gave no explanation as to why he did not observe the company truck approaching on the fire lane; there is no indication that visibility was poor on December 28, or that the truck was speeding. Once having given the signal to proceed to the individual operating the engine the Claimant had the responsibility to ensure the safety of the movement over the fire lane. This he failed to do. We, therefore, agree with the Carrier that Claimant was at fault in this case for not properly protecting the crossing at 71 track north.

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 16th day of January 1991.