

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

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern-Louisiana & Arkansas Railway Company violated the controlling agreement, particularly Rule 29, when Carman V. C. Humphrey, Shreveport, Louisiana, was suspended from service for ninety (90) days.

2. That accordingly, the Kansas City Southern-Louisiana & Arkansas Railway Company be ordered to make Carman Humphrey whole by compensating him for all time lost and for any and all other benefits he may have been entitled to.

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 was suspended for violating several Carrier Safety Rules in connection with an accident which occurred at 9:00 P.M. on June 21, 1989. The Organization contends that he was denied a fair Hearing because the notice of charges failed to specify which Rules he was alleged to have violated. The Organization further contends that the evidence presented at the Investigation failed to prove the charge, but established that the accident was caused by inadequate lighting and unsafe practices in pushing cars. Carrier contends that the evidence proved the charge and that Claimant was provided a fair Hearing.

Based on our review of the record, we find that Claimant was provided with a fair Hearing. The notice of Investigation advised Claimant of the date, time, location and specific details of the incident under investigation. It did not prejudice Claimant's ability to prepare for the Hearing.

We further find that Carrier's finding that Claimant's Safety Rules violations contributed to the accident is supported by substantial evidence in the record. Claimant was injured while standing between Long Track No. 1 and Long Track No. 2 in Carrier's Deramus Yard in Shreveport, Louisiana. It was extremely dark and the passage between the two tracks was very narrow. Claimant and another carman were watching cars being dragged south on Track 2 when they were struck by cars being pushed north on Track 1. The cars on Track 1 were being pushed blind, i.e., without displaying a light, a common practice in the yard.

Claimant testified that he was aware of the dangerous conditions present in the yard but assumed that the cars on Track 1 were not moving because they had been there for several hours. Claimant's testimony establishes his failure to pay proper attention to the conditions and to the cars on Track 1. Accordingly, we find that Carrier acted properly in disciplining Claimant.

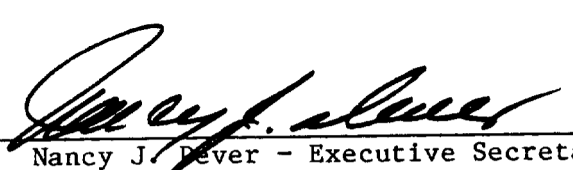
Because we find for Carrier on the merits, we find no need to address the other arguments raised by Carrier.

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 5th day of August 1992.