

Award No. 3840
Docket No. 3821
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA
A. F. of L. — C. I. O. (Railroad Division)

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY AND
THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

The organization cannot accept the decision of the carrier regarding the investigation held in the office of R. D. Redding on June 17, 1959 charging T. P. Hanlon and R. H. Hart with failure to place a blue lantern on a derail they placed on the west end of No. 1B Departure Yard on the night of June 11, 1959, resulting in a derailment. On the night of June 11, 1959 there were no blue lanterns available for these employees to place on the derail placed by them on the west end of No. 1B Departure Yard. For this reason the organization requests the carrier to rescind the sentence given the two employees, clear their records, compensate them for all time lost plus four hours for attending the investigation during their rest period.

EMPLOYEES' STATEMENT OF FACTS:

This case arose at Youngstown, Ohio and is known as Case Y-132.

The carrier had no blue lanterns available for these employees to use on the derail but they were instructed to work without the blue lanterns.

Had they not obeyed the foreman then they would have been held for insubordination.

The carrier admitted they were wrong because the carrier gave the foreman a reprimand for not having blue lanterns available for the employees to use.

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 employe 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 were given due notice of hearing thereon.

The plain object and purpose of the blue light was to give notice of the derail so as to protect against damage to person or property. Since there were no blue lanterns available on the night in question, it was incumbent on the employees to take other steps to give notice. Had they notified their foreman, the onus would have been on him to take effective steps to eliminate the hazard.

The fact that there was a custom of operating without blue lanterns can not serve to excuse the claimants in the instant case from taking positive action to protect against the risk which the placing of the derail created.

The fact that others, including possibly the foreman, may have been also negligent does not excuse the conduct of claimants. The standard of reasonable prudence remains constant and is not lowered by reason of the fact that there may be general laxity. Each workman must exercise care commensurate with the circumstances. It is the extent of hazard of harm which determines the extent of duty of care and not the actions of others.

Other measures precautionary in nature were available. Claimants could have notified their foreman of the condition, or they could have communicated with the control tower by two way radio. No justification for their failure to act is apparent.

We must conclude that the action of the Carrier was under these circumstances justified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1961.