

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6580
Docket No. 6436
2-FGE-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { Railway Employees' Department, AFL-CIO
(Carmen)
{ Fruit Growers Express Company

Dispute: Claim of Employees:

1. That under the controlling agreement, the Carrier improperly held Lead Carman, J. T. Stapleton out of service from October 2, 1971 through October 14, 1971.
2. That accordingly, the Carrier be ordered to compensate Lead Carman, J. T. Stapleton, for all time lost during the aforesaid period and for any other benefits due him under the current 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 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 waived right of appearance at hearing thereon.

Claimant was a leadman with responsibility for servicing and inspecting loaded trailers, making inbound and outbound train inspections or delegating this work to employees under his supervision. Claimant was disciplined by a ten day suspension for failure to perform his duties properly, after an investigation. He was charged as follows:

"... failure to perform your duties as leadman in that you failed to notify General Foreman, D. J. Durkee, your immediate supervisor, that there were two trailers under load yet to be serviced and inspected for outbound movement on September 30, 1971..."

The record indicates that Claimant had been informed, shortly before leaving work on September 30th, that the two trailers in question were not to be loaded out that night. The General Foreman was given information about thirty minutes after Claimant left work that the two trailers were in fact to move out that night. The record of investigation reveals that Claimant had made two visual inspections of the two trailers, but had not recorded these inspections in the "T 1½" book. Testimony further indicates that the normal procedure was to make a temperature inspection and record it in the T 1½ book at least once every twenty four hours. There is a presumption

but no evidence, that Claimant had not complied with the twenty-four hour inspection and recording practice: however, he was not charged with this infraction. There is no evidence in the record that Claimant knew the trailers were scheduled for outbound movement on September 30th nor is there any evidence to indicate an obligation on the part of the Claimant to notify the General Foreman that trailers were in need of servicing or inspection. In short, the transcript of the investigation does not contain evidence in support of the charge.

It is clear and long established that in discipline cases the burden of proof is on the Carrier and the investigation must demonstrate clearly that the employee is guilty of the particular charge levelled against him. (See Third Division Awards 12252, 14120 and 15412 among others) In this case the Carrier has failed to substantiate the guilt of Claimant, as charged.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1973.