

Employes contend that the Carrier has not met the burden of proof required to a finding of guilt as charged. Claimant carried out all instructions given him by his foreman. If an air leak existed on rear car 32 at 8:15 P.M., the Claimant could not have known because he was at the north end of the train while the car was at the south end of the 113 car train. As for the second charge, Employes say that the Claimant complied with Bulletin No. 245 when he passed over moving cars. He had never been instructed not to do so. In any event it was never enforced.

There is no question that a fair and an impartial investigation was conducted as prescribed in the rules. It is so admitted in the record by Claimant and his representatives.

Claimant was a Car Inspector. On instructions from his Car Foreman he inspected the air line from the middle of the train to the caboose. Another Carman inspected the line on the head end of the train. When completed, the air pressure of the caboose was 35 pounds instead of about 60 pounds before the engine was coupled to the train. Upon reinspection by another Carman, a broken line was found at the south end of the 32nd car from the caboose, 25 cars south of Yard Air No. 6.

Whether or not the Claimant failed to properly inspect the cars must be determined by the evidence in the record. There is no question that the Claimant made the inspection of the south end of the train. There is also no question that a leak was found on the 32nd car from the caboose. And there is no evidence that the leak occurred after Claimant's inspection. The overwhelming presumption from all the evidence in the record is that the Claimant made an improper inspection. The mere fact that the Claimant was at the north end of the train when the leak was discovered does not absolve him from the original faulty inspection. There is sufficient substantial evidence in the record to justify the assessment of the penalty. Carrier met the required burden of proof. It has not been shown that the Carrier acted arbitrarily, capriciously or unreasonably.

In view of the established findings to the first charge, it is not necessary to discuss the second.

A W A R D

Claim denied.

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 15th day of January, 1974.

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Burlington Northern, Inc.

Dispute: Claim of Employees:

1. The Burlington Northern, Inc., unjustly, improperly, and without supporting their position, suspended Mr. R. L. Stewart from service five days commencing January 28, 1972, to and including February 1, 1972.
2. That accordingly the Burlington Northern, Inc., be ordered to make R. L. Stewart whole, compensating him for all time lost, and removing all entries from his personal record referring to this incident.

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.

This claim arose out of the same incident as the one in Award No. 6620. This Claimant was also suspended for five (5) days for the same reason. There was a single investigation for both Claimants. The evidence in the record is identical.

For the reasons stated in Award No. 6620, the instant claim should be sustained.

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 15th day of January, 1974.