

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

Parties to Dispute: (System Federation No. 4 Railway Employees'
(Department AFL - CIO - Carmen
(
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That the Carrier violated the provisions of the controlling agreement when they suspended Carman H. D. Race, Jr., for ten (10) calendar days.
2. That the Carrier be ordered to compensate and make whole H. D. Race, Jr., for all loses arising out of incident of April 18, 1973.

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.

After an investigation Claimant was found to be at fault "...for responsibility in connection with derailment of Wreck Crane X-219..." on April 18, 1973 and was assessed a ten calendar day actual suspension. The record indicates that the Wreckmaster was the only other employee disciplined and he was given a ten day deferred suspension.

In this case the wrecking crane turned over, injuring the crane operator, after two cars had been re-railed and in the process of working on the third car which had previously been derailed. Petitioner's position is based on the contention that the hearing was unfair and that Carrier had not produced sufficient evidence to sustain its conclusion as to the guilt of Claimant. The argument with respect to procedure is based on the contention that the hearing officer was the charging party as well as the "prosecutor and judge". We find nothing in the rules of the applicable agreement which precludes the company official who prefers the charge from conducting the investigation and rendering the decision. This issue has long been settled by this Board (see for example Awards 1788, 5360, 6229 and 6538).

Carrier states that Claimant was responsible for the derailment of the Wreck Crane, which fact was clearly and conclusively established by the record of the investigation. Carrier concludes that in view of the potential and actual seriousness of the incident, the penalty assessed was lenient. Carrier's position is based on the argument that Claimant was charged with the responsibility of seeing that the air brakes were set on the crane and on the relief train, which he acknowledged, and that he failed to fulfill this responsibility.

A careful analysis of the testimony at the investigation indicates no specific reason was adduced which could explain the movement of the crane causing the accident. Furthermore there is even question as to whether Claimant did or did not properly perform his duties at the time in question since there was clear and unequivocal testimony that only orders from the wreckmaster were to be followed by the crew. But, assuming, arguendo, that Claimant was derelict in performing his job and did not in fact make an effort to see that the brakes were set, no causal relationship was established which would indicate that such act was the proximate cause of the accident. We must conclude, therefore, that the evidence at the investigation did not support the conclusion reached by Carrier. It is well established that in discipline cases, such as this, the burden of proof must be sustained by Carrier and the evidence must be substantial and demonstrate clearly that the employee is guilty of the charge leveled against him (Award 6580). In the instant case Carrier has failed to sustain the burden imposed upon it.

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 28th day of October, 1975.