

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

Parties to Dispute: ( System Federation No. 16 (formerly System Federation  
( No. 57) Railway Employees' Department, AFL-CIO  
( (Carmen)  
(  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the Current Working Agreement Carman R. Rodriguez was unjustly assessed a thirty (30) day deferred suspension on October 18, 1973, as a result of an investigation held on September 19, 1973.
2. That the Carrier be ordered to remove from Carman Rodriguez's service record the thirty (30) day deferred suspension.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 R. Rodriguez is a carman work inspector on the rip track at Calumet Yard in Chicago, Illinois. His responsibilities include marking equipment for repairs and then following up to insure that required repairs are made.

On August 19, 1973 a car (TTX 478593) came into Calumet for repairs including removal of couplers at both ends. Repairs were completed under Claimant's supervision and the car was released on that same date. Some five hundred (500) miles later at Swanville, Pennsylvania, the train in which the car was traveling was involved in a derailment. Suspicion pointed to the pulling out of the east end coupler on car TTX 478593 as the cause of the derailment.

On August 23, 1973 Claimant received the following notice of investigation:

"You are hereby requested to report to the office of General Foreman, on Tuesday, August 28th, 1973, at 3:00 P.M., to determine your responsibility, if any, in the improper performance of your duties on Sunday, August 19th, 1973, in that improper repair was made to the East End coupler retainer pin plate, on car TTX 478593, resulting in the coupler pulling out and causing derailment of train AP-2, at Swanville, Pa., on August 21st, 1973.

Should you desire to have your duly authorized representatives and/or witnesses present, please arrange for their attendance."

Following several postponements the hearing was held on September 19, 1973 and thereafter on October 18, 1973 Claimant was advised as follows:

"This is to advise that you are being assessed a 30 day deferred suspension against your service record as a result of the investigation held on September 19th, 1973."

By letter dated November 26, 1973 Petitioner appealed the 30 day deferred suspension on the grounds of insufficient evidence, violation of due process and condonation of the repair technique by Carrier. The Carrier denied the appeal and asserted that Claimant was afforded the due notice and impartial hearing required by the Agreement, that sufficient evidence exists to support a finding of guilt and that the penalty assessed was not arbitrary, unreasonable or capricious.

Review of the record facts shows that in coupler repairs the retainer pin plates should be secured by four (4) 7/8 x 3 bolts with a lock nut or unit lock nut, as required by A.A.R. Rule 74. Uncontroverted testimony at the hearing indicates that on August 19, 1973 Carrier did not have lock nuts available or in stock for the repairs on car TTX 478593 and that car repair employees used regular nuts and then spoiled the threads. Petitioner asserts and Carrier nowhere denies that this practice was followed with the knowledge and tacit acquiescence of Carrier's supervisory personnel. The record shows that since the derailment in this case Carrier has purchased and is using lock nuts to secure bolts on retainer pin plates.

Claimant concedes that no lock nuts were used to affect repairs to TTX 478593 but states that the bolts were tight and secure when he inspected same before the car left Calumet.

In our judgment Carrier erred in assessing any discipline in this case because the evidence does not support the implicit accusation that the lack of lock nuts was the proximate cause of the derailment 500 miles away and 5 days later. Equally important, however, is the fact that Carrier condoned and participated in the practice of spoiling threads and failing to use lock nuts by not providing the required materials for the employees to use. In this situation where Carrier is in pari delicto, if arguendo Claimant is at fault, it ill behooves management to punish an employee for alleged improper work performance it had effectively encouraged and abetted. We shall sustain the claim.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of February, 1976.