

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 6
(Railway Employees' Department
(A. F. of L. - C. I. O. - Carmen
(
(William M. Gibbons - Trustee
(Chicago, Rock Island & Pacific Railroad Co.

Dispute: Claim of Employees:

1. That under the terms of the applicable Agreement the Carrier unjustly suspended Carmen C. J. O'Neil and L. R. Stickler for 45 days.
2. That accordingly the Carrier be ordered to compensate L. R. Stickler for 31 days pay in the 45 days of suspension and that C. J. O'Neil have the 45 days suspension removed from his record.

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.

Claimants each received 45-day suspensions based on their actions on August 8, 1974, while working under a caboose. Following accidental movement of the caboose, one of the Claimants was injured during the incident and became permanently disabled. The Claimants were charged with violation of "Carrier's Rules 'B', 'L' and 'N(2)' of both Form G-147 Revised and Uniform Code of Safety Rules and Rule 26 of Uniform Code of Safety Rules". Particularly pertinent is Rule 26 which reads as follows:

"26. A blue signal displayed at one or both ends of an engine, car or train, indicates that workmen are under or about it; when thus protected it must not be coupled to or

moved. Each class of workmen will display the blue signals and only these same workmen are authorized to remove them. Other equipment must not be placed on the same track so as to intercept the view of the blue signals, without first notifying the workmen.

"When emergency repair work is to be done under or about cars in a train and a blue signal is not available, the enginemen will be notified and protection must be given those engaged in making repairs." /Underlining added/

This Board finds the Carrier acted arbitrarily and unreasonably in assessing disciplinary penalties on the two Claimants, based on the record presented to the Board, on two points: (1) Primary responsibility for the accident rested on two other employees of the Carrier (one a supervisor), and (2) there is sufficient conflict as to secondary responsibility so as to make disciplinary action against the Claimants unwarranted.

As to the first point, blue warning flags were put in place by Claimants. One flag was removed by a Caboose Supplyman, at the direction of a Car Foreman, in violation of Rule 26, and in particular the portion quoted above and underscored. Absent this dereliction of duty, the accidental movement of the caboose in all likelihood would not have occurred, the injuries to the Claimants would not have resulted, and there would have been no disciplinary action.

The secondary cause has to do with use of blue locks, in addition to the blue flags. If this alone were used as the basis of discipline, the hearing record contains sufficient contradictory testimony to make this of little value in assigning discipline to the Claimants.

Although the Carrier takes a meritorious position in insisting on full compliance with safety rules by all employees, the evidence in this particular instance does not support the Carrier's disciplinary action against the Claimants.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Form 1
Page 3

Award No. 7185
Docket No. 7020
2-C, RI&P-CM '76

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of November, 1976.