

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. 21, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Southern Railway Company

Dispute: Claim of Employees:

1. That under the Agreement, Carman J. T. Soniatdufossat, New Orleans, Louisiana was unjustly suspended from service two (2) days, March 2 and 3, 1977.
2. That accordingly the Carrier be ordered to pay Carman J. T. Soniatdufossat two (2) days at his regularly assigned rate for March 2 and 3, 1977.

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 herein was charged with "... failure to perform your duties as car inspector in that you failed to detect broken center sill ..." on a particular car. The car in question, without repair, made a round trip on a train and subsequently was sent to a repair point, all without incident. On the date of Claimant's alleged error, an AAR inspector found the crack in the center sill and brought it to the attention of Claimant's foreman. As a result of the investigation, in which Claimant was found guilty as charged, he was assessed a two day disciplinary lay-off.

Carrier stated that there was substantial testimony at the hearing to indicate the existence of the flaw. In view of the seriousness of the potential for damage from such a flaw, the discipline was warranted, according to Carrier. It was also argued that two days was a most reasonable penalty under the circumstances.

Petitioner asserts that Claimant did indeed see the crack, but used his judgment, as instructed by Carrier in the past, and left the car in service. Petitioner states that the crack, according to the testimony was an old one which had been previously repaired and was covered by an angle iron welded on the inside portion of the sill. Further it is argued that the car passed through many other inspection points with no exceptions being taken to the crack. Finally, the Organization points out that the car in question was only sent for light repairs after the crack was reported, indicating the lack of seriousness of the flaw.

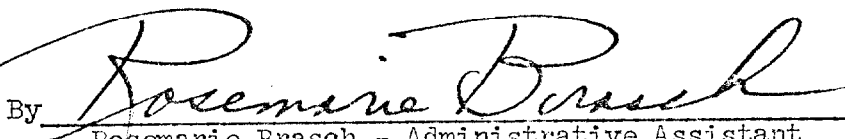
The thrust of Carrier's position in this dispute was that Claimant had used poor judgment in not reporting the crack in the sill. It must be noted that Claimant was not charged with the poor judgment call, but rather with not having detected the crack: a significant distinction. The testimony at the investigation makes it evident that Claimant did find the crack, but did not deem it important enough to report. The judgment question (and all the controversy that matter entails) is not at issue here; the only question is whether the testimony at the investigation supported Carrier's conclusion that Claimant was guilty. An examination of the transcript convinces us that Carrier did not meet its burden: there is insufficient evidence to indicate that Claimant was guilty as charged. For that reason, the Claim must 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 - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1979.