

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. 100, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement Electrician Edward G. Schwarz has been unjustly disciplined by the Consolidated Rail Corporation and unjustly held out of service thirty (30) actual days following a hearing held at Hornell, New York on September 29, 1977.
2. That accordingly the Consolidated Rail Corporation be ordered to vacate all the discipline assigned against Edward G. Schwarz and restore to him all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable electrician's rate for each day he has been improperly held from service; and all benefits and pay due him under the Regional Rail Reorganization Act of 1973; and all benefits due him under the group hospital and life insurance policies for the above mentioned period; and all railroad retirement benefits due him including unemployment and sickness benefits due him for the above described period; and all other benefits that would normally accrue to him had he been working in the above described period in order to make him whole.

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 dispute centers on the events taking place following the tow of locomotive unit EL-364 in train NY-72, without having been properly set for such towing. The consequence was that, while en route from its departure point, the engine with several cars ran away and resulted in the derailment of two cars.

The Claimant herein, an Electrician at Hornell, N.Y., was made the subject of an investigation on "alleged charges of improper inspection of Engine 364 for tow on September 19, 1977."

Following the hearing, Claimant was assessed 30 days actual suspension "for responsibility in connection with improper inspection of Engine 364 and preparing same for tow on September 19, 1977."

The Organization argues that the disciplinary penalty was based on charges not identical with the charges on which the Claimant was notified that he would be investigated. The Board finds merit in this argument and determines that the dispute rests solely on proof of "improper inspection", as in the pre-hearing letter of charge.

Claimant defends his position by stating that he was merely asked if Engine No. 364 was "O.K."; that he consulted a log book which so stated; and that he answered his supervisor in the affirmative. The supervisor, on the other hand, stated he asked Claimant if the Engine was "O. K. to go" and that the Claimant replied affirmatively. The Carrier takes the further position that the Claimant was aware that the engine was going to be towed, based on a previous log entry which the Claimant himself had made, and that his affirmative reply to the supervisor was in error in that the Claimant had failed to inspect the engine to see if it was in proper set-up for tow.

Communication between supervisor and Claimant may have been less than explicit. The Board, however, finds the Carrier's position reasonable that the Claimant could have been expected to give more than a perfunctory reply to his supervisor. To determine if the engine was "O. K." or "O. K. to go", it is not unreasonable to expect that the Claimant would reply in terms of whether or not the engine was ready for tow -- and he would have had to check the engine (i.e., inspect it) to determine this. This he failed to do, and therefore must bear some responsibility for the outcome.

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 1st day of August, 1979.