

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. 76, 'Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Car Inspector Norman Graham was unjustly dismissed from service on May 25, 1977.
2. Car Inspector Norman Graham was erroneously charged with failure to properly perform his duties as a train yard car inspector on March 20, 1977.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Car Inspector Norman Graham with his seniority unimpaired; compensate him for all time lost; and make him whole for any benefits he would have earned had he not been unjustly dismissed from service.

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 was charged with failing to detect a thin flange wheel on a car he inspected on March 20, 1977. Following an investigation, he was dismissed.

Carrier took the position that it was clear that Claimant inspected the particular car at Madison, Illinois on March 20, 1977 and found it to be without defect. Subsequently, on March 21st, some 240 miles distant, the particular car was at least a contributory factor in a derailment. After the derailment a wheel from the car in question was found to have a thin flange, below minimum standards. Carrier asserts that the thin flange could not have occurred in the relatively short distance the car travelled and hence Claimant must bear responsibility for the mishap due to his faulty inspection.

Petitioner raised a host of issues with respect to both procedure prior to the investigation and also to the conduct of the investigation. In addition, Petitioner claims that Carrier did not meet its burden of proof in this dispute. We shall examine one critical issue raised by Petitioner: was Claimant afforded a fair investigative hearing?

At the outset it must be noted that Claimant herein, a local union official, represented himself at the investigation. Further, in the notice of hearing and charge, no mention was made of the derailment and its impact on the matter. Carrier's sole witness in the investigation did not testify with respect to anything which occurred on March 20th. He did testify about the derailment which occurred on March 21st and also was questioned about some general principles relating to inspections. He offered no details concerning the derailment, its direct cause, or any other information about the circumstances.

Claimant attempted to elicit information from his sole witness about standards used in releasing cars after inspection at Madison, and also to testify himself as to alleged discrimination against him. He was prevented by the hearing officer from testifying or questioning his witness about anything which was not specifically related to March 20th only. Claimant was prevented from eliciting testimony to contradict that of Carrier's witness. In short, a careful evaluation of the transcript indicates conclusively that Claimant was precluded from developing his defense. In addition, in our judgement the Hearing Officer harassed Claimant in the course of the hearing, by forcing him to ask himself questions, rather than permitting direct testimony.

It is axiomatic that the hearing officer cannot have an adversary role at an investigative hearing. He is a seeker of the truth and must afford the Claimant broad latitude to present his defense. Even though a hearing officer may desire to develop the facts expeditiously he cannot, in pursuit of that goal, restrict a claimant's presentation unduly and certainly not on a discriminatory basis, as was the case in the instant dispute. Claimant should, at minimum, have been permitted to refute the testimony presented by Carrier's witness. It is possible that Claimant's testimony might well have been irrelevant or unpersuasive; however, he should have been permitted to introduce material which he felt was relevant to the dispute.

It is our conclusion that the restrictions placed on Claimant by the hearing officer deprived him of the due process requirements of a fair and impartial hearing. We must allow the Claim without deciding the merits thereof.

A W A R D

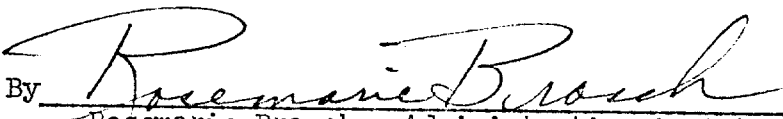
Claim sustained; Claimant will be reinstated in accordance with the provisions of Rule 35, paragraph (h).

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Award No. 8039
Docket No. 7863
2-C&NW-CM-'79

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 15th day of August, 1979.