

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. 7 Railway Employees'
(Department A. F. of L. - C. I. O.
((Firemen and Oilers)
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Walter White, hostler-laborer, Vancouver, Washington, was unfairly dealt with when suspended for a period of five (5) days of actual service from the Burlington Northern, Inc. on April 28, 1977 to May 2, 1977.
2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. Walter White for all time lost at the pro rata rate and any reference to this incident stricken 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 employees 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 received the following disciplinary notice and action from the Carrier on April 27, 1977:

This is to advise you an entry is being placed on your personal record and you are being suspended from the service of Burlington Northern Inc. from April 28, to May 2, 1977, inclusive, for violation of Rule 106 of the Air Brake and Train Handling Rules and Rule 119 of Burlington Northern Safety Rules for failing to make certain air brakes were cut in and operative before moving the locomotive resulting in unit 4256 under your charge striking another unit resulting in injury to yourself and your helper during hostling operations at Vancouver, Washington, at about 3:20 PM, April 8, 1977..."

The five-day suspension was levied following a full and fair investigative hearing.

Claimant was directed to move a locomotive a short distance, as part of his regularly assigned duties. Testimony showed that he admitted failing to check for brake cylinder pressure prior to putting the locomotive in movement and that he was aware that this was in violation of an essential safety precaution.

There was some evidence that employees previously working on the locomotive failed to re-engage the brake valve. Such omission, if it in fact occurred, does not lessen the Claimant's responsibility. The issue here is the failure to take a recognized safety measure prior to movement of a locomotive, with a view to preventing personal injury and equipment damage, and this is the only matter presently before the Board. As stated in Third Division Award No. 17761 (Kabaker):

"This Board has ruled on many occasions that the failure to discipline or file charges against one employee cannot be used as a defense by another employee for his improper conduct or for acts of negligence on his part. We are in full agreement with this general principle and find it applicable to the instant situation. See Awards 3321, 3342, 8488, 9034, 11003, 13399, 13643, 15931 and 15978."

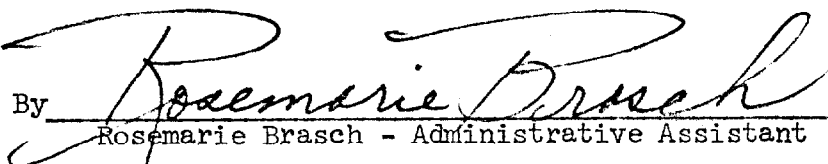
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of September, 1979.