

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 1 Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended Carmen L. Farmer and C. Stiver, Springfield, Missouri, from service for thirty (30) days, beginning on August 31, 1977, through September 30, 1977, resulting in loss of twenty two (22) working days by L. Farmer and twenty one (21) working days by C. Stiver, as a result of an investigation conducted on August 9, 1977, in violation of the Controlling Agreement.
2. That the St. Louis-San Francisco Railway Company failed to provide materials used in the investigation to Carmen L. Farmer and C. Stiver and their representatives prior to the investigation, for them to prepare a proper defense.
3. That the investigation was not fair and was improperly conducted.
4. That Carmen L. Farmer and C. Stiver be compensated for time lost plus six percent (6%) interest and that their personal records be cleared of all charges pertaining to this case.

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.

After carefully considering the numerous procedural objections raised by claimants regarding the administration and conduct of the August 9, 1977 investigation, this Board does not find that claimants' due process rights were violated.

While we express some concern with the long hand recording of the hearing and the separate interrogation of the claimants, we do not find that specific identifiable mistakes were made or the claimants questioned in a visibly prejudicial manner. The hearing officer did not testify as a witness and carrier adequately observed Rule 35(a)'s notification requirements. The record does not show that this rule was construed as including a discovery proceeding, prior to the convening of the formal investigation and thus we must conclude that the information delineated in carrier's August 2, 1977 letter satisfied this requirement.

In the instant case, claimants were found guilty of failing to comply with General Regulations B and C of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employees and suspended from service for thirty (30) days, effective the close of shift August 30, 1977. This disposition is now before us.

In reviewing the substantive aspects of this case, we recognize, of course, the technical nature of the repair which is at issue in this dispute and the difficulty in trying to reconstruct the precise pattern of events that led up to the derailment of train 235 on July 21, 1977.

But we believe that the derailment was caused by the brake beam coming down on SLSF 61630, the first car behind the engine.

Inasmuch as we can understand claimants' rationale for cutting off the safety support for the brake beam, particularly in view of the power plant failure and the difficulty of cutting the two (2) bolts that secure the safety support, we find that they understood the implications of this approach, and thus to some extent, bear a responsibility for the result.

We do not find, on the other hand, that claimants willfully elected to cut off the safety support to save time or to avoid their responsibility.

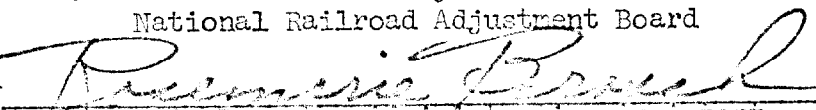
We agree with claimants that the thirty (30) days suspension penalty is somewhat excessive, when measured against the circumstances of their performance and thus we will reduce it to five (5) days. This modification does not include the six (6) percent interest additionally claimed for time lost.

A W A R D

Claim sustained to the extent expressed in the opinion.

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 27th day of September, 1979.