

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Firemen & Oilers)  
                          { Burlington Northern Inc.

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. E. C. Durham, Hostler Helper, Chicago, Illinois, was unfairly dealt with when an entry of censure was placed on his record by the Burlington Northern, Inc., effective April 17, 1978.
2. That, accordingly, the Burlington Northern, Inc., be ordered to remove the entry of censure from his personal 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 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 was a hostler helper employed in the Carrier's shop at Chicago, Illinois. On February 25, 1978 the Claimant was assisting a hostler in the movement of certain switch engines. During the movement of these engines several units collided with another unit causing damage to drawbars.

The Claimant was charged with giving improper signals to the hostler and/or failing to give proper signals in a timely manner. After an investigation, the Claimant was censured for violation of Carrier's rules or safety by failing to exercise care in coupling engines and in failing to stop less than 50 feet to adjust drawbars.

It is the position of the Carrier that the Claimant was properly and clearly apprised of the subject matter of the investigation and that the investigative record proved that the Claimant failed to give a proper stop signal in a timely manner. Therefore, the Carrier contends that the imposition of discipline was proper and not arbitrary.

It is the contention of the Organization that the Carrier's action was unjust and arbitrary when it disciplined the Claimant for the collision that occurred. The Organization contends that the hostler involved in the incident was an employee with only one day hostling experience prior to the date of the incident and that the evidence at the investigation revealed that the Carrier no longer trains hostlers as intensively as it had in the past.

Although the notice setting the investigation as well as the notice to reschedule the investigation did not specify particular safety rules which the Carrier alleged were violated by the Claimant, both notices were sufficiently specific regarding the incident which was being investigated. It is found that the notice complied with Rule 28(c) of the agreement regarding investigations.

The evidence of record, regarding the collision, indicates that the Claimant gave the hostler a back-up sign which was acknowledged and the hostler began to back his unit. The record also supports a finding that the Claimant communicated an easy sign to the hostler sometime subsequent to the Claimant's stepping off the foot-board. Although the Claimant contends that he communicated a stop sign to the hostler, at or about 30 feet from the point of collision, the record does not support a finding that this stop sign was properly communicated. Either the stop sign was given from a point where the hostler could not pick it up (view it) or the stop sign was given at a time when the unit could not have been stopped in any event to avoid the collision.

The evidence does not support a finding that the short term experience of the hostler was the cause of the accident. Even if there was some merit to the claim that the hostler's short term experience was a contributing factor to the collision, such a contention does not mitigate the blame which the Claimant had for failing to properly communicate the stop signal to the hostler.

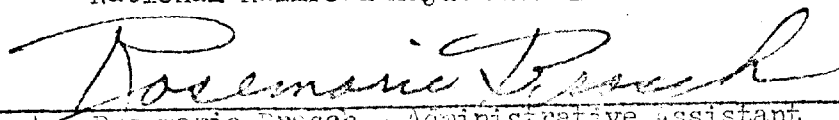
This Board finds that the Carrier's assessment of discipline, the entry of censure on the record of the Claimant for failing to give a proper stop signal, was justified.

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 28th day of November, 1979.