Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8337
SECOND DIVISION Docket No. 8245
2-BNI-FO-'80

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

Dispute: Claim of Employes:

1. Under the current controlling Agreement, Mr. D. L. Daniel, hostler-helper, Havre, Montana was unjustly dealt with when suspended for a period of five (5) days of actual service from the Burlington Northern, Inc.

2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. D. L. Daniel 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 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.

On February 12, 1978, there was an uncoupling between Engine No. 244 and Heater Car No. 661 on Amtrak No. 8 out of Havre, Montana. The uncoupled portion of the train eventually caught up with the engine, ramming it and causing a derailment of the engine and two heater car units. Mr. D. L. Daniel (the claimant) a hostler helper at carrier's Havre, Montana, shop, was working with the hostler responsible for putting the power unit together and getting it ready to pull the train out of Havre. An investigation of the uncoupling and derailment was held on February 21, 1978.

As a result of that investigation, the claimant was found to be derelict in his duties in not making sure that the coupling between the engine and the heater car was properly locked and secure. The carrier assessed a five-day suspension and placed a note of censure in the claimant's personnel file. The organization alleges that the claimant was improperly penalized and that the carrier had not proven, by credible evidence and testimony, that the claimant was responsible for the uncoupling and subsequent derailment. The accident took place fifteen miles from Havre on a cold, snowy, winter day. The organization claims carrier based its discipline on suspicion and not on the facts.

The Board is here confronted with a claim in which the organization charged that the carrier did not carry its burden of proof in fixing the responsibility for the uncoupling of the train on the claimant. Carrier relied on the testimony of the two uninterested expert witnesses who claimed that if the locking blocks on the coupler were properly closed and locked, it would be impossible for the train to uncouple, as it did in this case. No defects were found in any of the parts of the coupler on the engine or on the heater car.

All witnesses, including the claimant, testified that it would be impossible for the train to separate if the couplings were properly made and locked. Testimony also revealed that if the lock block was only partially in place, the train could be pulled for a long period of time. Vibrations or some other motion occurring while the train was in motion could then cause the lock block to come out of the coupling and separate the train. Absent any other probable reason to cause the train to come uncoupled (other than the lock block popping up) the carrier concluded that the employees who initially put the power unit together were derelict in their duties and failed to make sure that the lock block on the heater car was completely down and locked and the coupling between the engine and the heater car was secure.

Carrier has arrived at its conclusion in this case based on circumstantial evidence, a process of deduction that places the blame for the uncoupling of the train squarely on the claimant.

The organization offered no plausible explanation for what took place to refute the testimony given by the expert witnesses or to challenge the validity of the carrier's conclusion. It is well established by the board, as well as in other arbitration forums and in the courts, that circumstantial evidence is a valid basis on which to support a charge. Based on the record before it and having taken judicial notice of Award No. 3, Public Law Board No. 2317, this Board must deny the claim.

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 16th day of April, 1980.