

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. 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. That in violation of the current Agreement, Mr. David C. Moe, laborer, Minneapolis, Minnesota, was unjustly dealt with when suspended from service of the Burlington Northern, Inc., following hearing held on April 26, 1978; from May 22, 1978 through May 31, 1978.
2. That, accordingly, the Burlington Northern, Inc. be ordered to make the aforementioned Mr. David C. Moe whole by compensating him for all time lost including holiday pay, 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.

This instant dispute involves the ten (10) day suspension without pay of Claimant as a result of his alleged actions regarding a fuel oil spill which occurred at Carrier's Northtown Diesel Shop on April 4, 1978. Carrier contends that Claimant's actions were violative of Carrier's Safety Rules and Regulations #661, #662, and #665.

Claimant contends that his suspension was improper in that if the spill did in fact occur while Claimant was fueling specified unit BN 5748 on April 4, 1978, as Carrier alleges, then said spill occurred as a result of a faulty automatic shut-off valve and an obscured fuel sight gauge. Additionally, Claimant's Organization contends that Claimant was denied a fair and impartial hearing in this dispute in that the Hearing Officer denied Organization's request to sequester the witnesses during the hearing itself.

A careful review of the record in this dispute clearly indicates to this Board that, despite Claimant's protestations to the contrary, a fuel oil spill of considerable magnitude occurred at approximately 3 A.M. on April 4, 1978, as per Carrier's charge. Although Claimant maintains that the Carrier's contentions are mere speculation and conjecture, this Board is persuaded that such contentions in this regard are both substantial and creditable, and therefore are a sufficient quantum of proof to sustain this portion of the Carrier's claim.

Despite the foregoing conclusion, however, this Board does not find sufficient proof to support Carrier's specific contention that said spill was directly caused by Claimant's carelessness and inattention to his duties. In this regard the record clearly shows that there was a multiplicity of intervening variables which, either alone or in combination, could have caused or did cause the resultant spill. The admittedly faulty automatic shut-off valve, the possibly obscured fuel sight gauge, as well as possible adverse weather conditions, and an alleged deficient training program all combine to raise serious questions regarding the Claimant's actual role in this aspect of the incident.

Having determined that there is insufficient proof to determine with any reasonable degree of accuracy and fairness that Claimant directly caused the subject fuel spill, our attention turns to Claimant's actions immediately following the actual fueling operation. On the basis of this analysis, it is clear to this Board that at this particular time Claimant was aware that something was awry with the fueling operation (noticed bubbles coming from ground at fueling site; had activated two complete fueling cycles and fuel gauge did not respond), yet he either failed to comprehend the implications of these tell-tale signals or he simply chose to ignore these signals so as to obfuscate his role or responsibility for the incident itself. In either event, this Board believes that in this regard Claimant acted in a considerably less than desirous manner and that an otherwise reasonable, conscientious and responsible employee would have seen fit to investigate the situation and/or to report these unusual circumstances to the proper authorities. As the record shows, however, Claimant did not pursue this acceptable and appropriate course of action, and he therefore now must suffer the consequences of his obvious neglect.

The last area of consideration in this dispute pertains to the Organization's contention that Claimant was denied a fair and impartial hearing in that the Hearing Officer denied the Organization's request to sequester the witnesses at the investigatory hearing. This Board is unpersuaded by this argument since such an obligation is not contained in the parties' negotiated agreement. Under such circumstances, the Hearing Officer is under no obligation to grant such a request but may do so at his/her discretion. Thus, in this dispute, the denial of the request to "sequester the witnesses" was neither improper nor was it a denial of Claimant's due process rights. The propriety of this particular consideration has been addressed by numerous Boards previously (See: Award 18 179 of the First Division; 4001 of the Second Division; and 5061 of the Third Division) and needs no further elaboration by this Board.

A W A R D

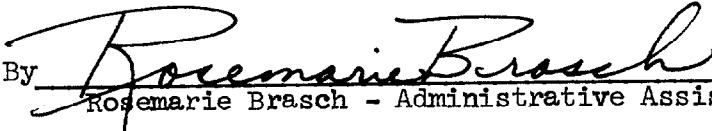
Claim denied.

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Award No. 8356
Docket No. 8351
2-BNI-FO-'80

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 4th day of June, 1980.