

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United
States and Canada
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company unjustly assessed Carman H. N. Blumenhorst a five (5) day deferred suspension and Carman Robert White a five (5) day actual suspension, on October 12, 1977, as a result of investigation held September 13, 1977, at Fort Wayne, Indiana.
2. That the Norfolk and Western Railway Company be ordered to remove the five (5) day deferred suspension from the service record of Carman H. N. Blumenhorst, and also remove the five (5) day actual suspension from the service record of Carman Robert White, make him whole for all wages lost, seniority and vacation rights, as a result of unjust discipline.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The testimony of record reveals that Mr. Freise's inspection detected the journal boxes of freight cars NW 53594, SP 653141 and CJ 3032 had not been properly inspected and serviced; that the claimants inspected these cars on track 19; that several of the journal boxes on these cars contained no visible oil nor any evidence whatsoever of fresh oil. It is firmly established that the failure of employees to properly inspect and service journal boxes is not an inconsequential matter to be taken lightly, but rather is a serious offense which can result in considerable property damage as well as endanger the well-being of employees and the public. It is the duty of the Carrier to provide a safe place to work for its employees and to provide a safe and efficient operation for the public, and this cannot be done if the Carrier condones the improper performance of duty in a manner which can result in considerable danger to property, employees and the public. Condoning such conduct would present a hazard that the Carrier cannot tolerate.

It is further recognized that the formal investigation was conducted in a manner that was fair and impartial and in accordance with all provisions of the applicable agreement.

However, the employees claim that there was insufficient evidence of probative value produced at the investigation to support the charges against the employees is valid.

Mr. Freise testified, "That I do not know. I know that these particular cars were in the track at the time of the inspection and they were in the track at the time the inspection was made by the car inspectors". Furthermore, Mr. Freise testified, "It varies". Dillman asks, "How much oil will it absorb? If it is completely dry?" Freise: "A considerable amount of oil. It could depend upon what size of pad, this would have a bearing on it." Dillman: "What size of pad were these, do you know?" Freise: "I did not notice what size they were."

In the testimony above, and any future testimony, whether or not any of the cars were removed after the two men performed their work and prior to the time the following day when Mr. Freise performed his duties, was never indicated.

It is this Board's understanding that presoaked and/or dry pads have on numerous occasions soaked up the one-half inch oil placed in the box in a matter of hours.

In the light of evidence, and/or opinion of workers given in testimony, it is conceivable that oil was saturated prior to Mr. Freise's inspection. When conclusive evidence on such an important and serious condition is lacking, the Board must rely on judgement in the light of available testimony. The case for the carrier lacks the strength needed to uphold the Carrier's decision predicated on the above excerpts, testimony, documentation and the case as a whole. Therefore, the claim of the Employees is sustained.

The Norfolk and Western Railway Company be ordered to remove the five (5) day deferred suspension from the service record of Carman H. N. Blumenhorst, and also remove the five (5) day actual suspension from the service record of Carman Robert White, make him whole for all wages lost, seniority and vacation rights.

A W A R D

Claim sustained.

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 1st day of October, 1980.