

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That Laborer, W. J. Guiden, was unjustly dismissed from the service of the Missouri Pacific Railroad Company on June 29, 1978, on charges of alleged violation of Missouri Pacific Railroad Company's General Notices (1), (2), (3) and (4) and General Rules B & L of Uniform Code of Safety Rules reading as follows:
 - "1. General notice: Safety is the first importance in the discharge of duty.
 2. Obedience to the rules is essential to safety and is required.
 3. In case of doubt or uncertainty, the safe course must be taken.
 4. To enter or remain in service is assurance of willingness to obey the rules. This is under general rules (b) Employees must have a proper understanding and working knowledge of and obey all rules and instructions in whatever form issued applicable to or affecting their duties. If in doubt as to their meaning, employees must apply the proper officer for explanation. If in doubt as to proper work procedure employee must consult his supervisor.
L: Constant presence of mind to insure safety to themselves and other is the primary duty of all employees and they must exercise care to avoid injury to themselves or others. They must observe the condition of employment and the tools which they are using in performing their duties and when found defective will, in practicable, put them in safe condition, reporting defects to proper authorities."
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, W. J. Guiden, at the pro rata rate of pay for each work day beginning June 29, 1978, until he is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, W. J. Guiden, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Guiden an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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.

It is established that Foreman Mr. Ernest Zimmerebner observed the Claimant driving a wheel truck at 15 miles an hour when the speed sign designation says 5 miles an hour. That Mr. Clawson, General Foreman, questioned the Claimant who in turn, maintained that the Foreman was lying.

The Claimant thereafter was dismissed as a result of excessive speed jeopardizing his personal safety and his fellow workmen after formal investigation, dated June 27, 1978.

In testimony, Mr. Clawson described a concrete work area that has a speed restriction posted in two locations described as highly visible and a third sign before the Anjua House.

Truck #5272 was identified as speeding by Mr. Zimmerebner; also witnessed by Ernest Hall, acting Foreman, second shift. Mr. Guiden, Claimant, denied knowing speed limit.

Further testimony revealed that the area in question is a work area where employee safety is particularly important.

Mr. Guiden testified he drove the truck for ten months. He acknowledged he knew speed limits without observing signs. He knew the speed signs in the concrete area say 5 mph. He did maintain he did not speed.

It is the opinion of the Board that the speed limit was properly marked, the responsibility of Claimant was to adhere to the limit, protecting the safety of fellow workers and self.

The managers did not testify falsely against Claimant. Testimony on either side failed to show the testimony of the managers to be fabricated.

The Claimant was knowledgeable of the area but failed to adhere to a 5 mph limit as witnessed by two supervisors. Therefore, the decision of the Carrier is affirmed. The claim of the employe is denied.

A W A R D

Claim denied.

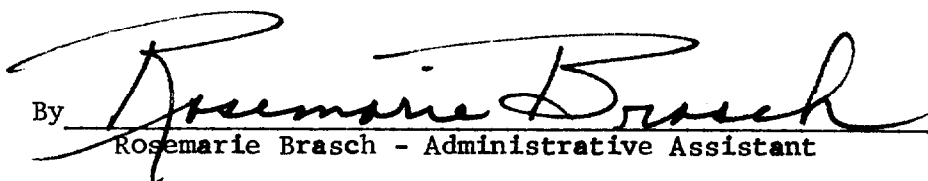
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Award No. 8631
Docket No. 8320
2-MP-FO-'81

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 25th day of February, 1981.