

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn 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 Carrier violated the Agreement of September 1, 1949, as subsequently amended when on February 10, 1978, Car Repairer R. G. Paxton, Jr., was given a formal investigation, for charges that were not clear or precise, resulting in unreasonable and capricious assessment of ten (10) days deferred suspension, against his service record.
2. That the investigation was improperly arrived at, and represents unjust treatment, within the meaning of Rule No. 37 of the Controlling Agreement.
3. That because of such violation, and capricious action, Carrier be ordered to remove such ten (10) days deferred suspension, from the said employee's service 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.

Roanoke, Virginia is a major terminal of the Norfolk and Western Railway and trains arrive and depart on three road divisions: the Radford, Shenandoah and Norfolk. The facilities of the Roanoke Terminal operate 24 hours per day and carmen are employed on all three shifts to inspect the inbound, outbound and through trains. These inspections can be accomplished in two ways, either a stationary inspection with the train standing and the inspectors walk the train, or what is commonly called a rollby inspection wherein the train continues moving and a carman will be assigned to each side to make the inspection of his side only as the train rolls by. Each inspector is issued a standard carman's lantern to assist in the performance of his duties during hours of darkness or reduced visibility.

On January 18, 1978 train 3BS78 arrived at the west end of Roanoke Terminal at approximately 5:45 a.m. and was given a rollby inspection by two carmen. Carman Pendleton was assigned to inspect the south side of the train and Carman Paxton (the claimant) was assigned to inspect the north side of the train. No exceptions were taken to the train and it continued into the terminal until the head end was in the vicinity of Park Street where the train stopped. The inbound train had 49 loads, 25 empties, a gross weight of 4,396 tons and was 5,224 feet long. While stopped in the terminal, cars were removed from the rear of the train and other cars were added, also to the rear of the train. The train departed eastward at approximately 6:40 a.m. with 62 loads, 26 empties, 5,249 gross tons and a length of 6,463 feet.

Kinney Yard is located in Lynchburg, Virginia and is approximately 50 miles east of Roanoke Terminal. At 8:45 a.m. the same date as train 3BS78 passed through Kinney Yard at approximately fifty miles per hour it was given another rollby inspection by the mechanical forces of Kinney Shop. The employees performing the rollby inspection at Kinney took exception to two cars in the train, TTX 102659, upon which was loaded piggy-back trailer NWZ 205081 from which lading was missing, and RTLX 221, a tank car that had a damaged safety appliance (hand rail and running board). At that time train 3BS78 was halted and the cars in question were checked and placed in a safe condition to allow them to continue to their destination. While checking the lading on the piggy-back trailer it was determined that a boiler had fallen from the trailer while enroute and had struck and damaged the following tank car (RTLX 221). Further investigation developed that the boiler had fallen from the trailer at Nolan, West Virginia, or approximately 206 miles west of Roanoke and, therefore, it followed that the damage existed when 3BS78 entered Roanoke Terminal.

It is alleged that the condition would not have been visible from the south side of the train during rollby inspection at Roanoke. The transcript established that Carman Pendleton had inspected the south side of the train and the carrier, therefore, believed that Carman Pendleton was not guilty of the charges and he was assessed no discipline. However, as Carman Paxton had inspected the north side of the train the carrier believed that Paxton was responsible as charged and he was assessed ten (10) days deferred suspension.

Our review of the record indicates that the discipline imposed on Claimant's service record was unreasonable, and establishes that the Carrier failed to produce evidence to prove the Claimant responsible for failure to properly perform his duties on the morning of January 18, 1978, in the inspection of RTLX 221.

The transcript of the investigation reveals in pertinent part the following:

- "C. W. Bocock: Mr. Paxton, how fast was the train 3BS78 traveling when you performed your inspection?
- R. G. Paxton: Approximately 25 to 30 miles per hour.  
\*\*\*\*\*
- D. L. Anderson: Yes sir. Mr. Paxton, with no other lighting other than your inspector's light, how much light can you throw onto a car at one time, meaning like size, one foot, two feet, three feet? Approximately how much of that car would it light up?

R. G. Paxton: Approximately two feet.  
\*\*\*\*\*

G. G. Robertson: Mr. Shelor, do you recall what color the tank car is, the car in question RTLX 221?

J. W. Shelor: Black.  
\*\*\*\*\*

J. L. Aleshire: Mr. Bevins, how is the visibility at night at this location?

K. L. Bevins: Well, it's extremely dark."

Train No. 3PS78 had a consist of seventy-four (74) cars, with a length of five thousand two hundred twenty-four (5,224) feet. "An inspector standing still and observing a car approximately eighty (80) feet long passing him at twenty-five (25) miles per hour, would only have approximately 2.18 seconds to observe a defect with a hand lantern throwing a circle of light two (2) feet in diameter." The entire length of this train passed the Claimant in approximately three (3) minutes and eight (8) seconds. It is virtually impossible to observe the under frame of cars, within this length of time for any outstanding defects other than something dragging, let alone raise a two (2) foot diameter of light to observe hand holds, as in this instance. A two (2) foot beam of light does not light up an entire car, nor would it indicate a broken handhold unless you were particularly looking for said defect.

Claimant performed his primary duty properly, in total darkness, with the equipment he had available.

Dealing with similar circumstances, this Board, held as follows:

Second Division Award: 4046, Referee Charles W. Anrod:

"In summary, we are of the opinion that the chain of events pointing to the claim and alleged guilt is inconclusive; the best that can be said is there exists a suspicion that the Claimant may have been negligent. Mere suspicion is not sufficient to prove that he committed the offense for which he was discharged.

On the basis of the foregoing, it is obvious that Claimant was improperly charged, and that the penalty assessed was unreasonable.

A W A R D

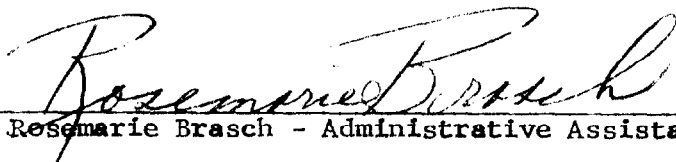
Claim sustained.

Form 1  
Page 4

Award No. 8973  
Docket No. 8532  
2-N&W-CM-'82

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 10th day of March, 1982.