

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Detroit and Toledo Shore Line Railroad Company

Dispute: Claim of Employees:

1. That the Detroit and Toledo Shore Line Railroad Company violated the controlling Agreement when it unjustly assessed Carmen James Bellville and Cary Adams five (5) days actual suspensions on April 3, 1980, as a result of investigation held March 20, 1980, at Toledo, Ohio.
2. That the Detroit and Toledo Shore Line Railroad Company be ordered to compensate Carmen James Bellville and Gary Adams for all time lost as a result of the unjust five (5) days actual suspensions from work, make them whole for all seniority and vacation rights and all other benefits afforded to them under the controlling Agreement, and immediately remove unjust discipline from their service records.

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 Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants, Messrs. J. Bellville, Inspector Write-up, and G. Adams, Carman were employed by the Detroit and Toledo Shore Line Railroad Company when the incident in question occurred. On March 5, 1980 they received notice to appear at formal investigation on March 13, 1980 with respect to the following charge by Carrier:

"... that during your tour of duty at the new car shop on Saturday, February 23, 1980 you were negligent in the repairs made to the coupler on the B end of tank car MCPX 23034. As a result, the coupler pulled out of the B end of car MCPX 23034 while being handled by a yard crew on #47 track with eight other cars at approximately 5:00 a.m. Sunday, March 2, 1980, causing seven cars to run free, with the south two cars, DTS 2361 and DTS 2412, derailing into the turntable pit, resulting in excessive damage to the turntable."

A third carman, Mr. N. Poole, also party to the original Carrier charge, was subsequently acquitted of all involvement in the incident in question. After request for hearing postponement by Organization on March 9, 1980 hearing was held on March 20, 1980. As a result of the hearing, Messrs. Bellville and Adams were notified on April 3, 1980 that each had been found guilty as charged and were being assessed a five (5) day suspension. After all appeals through appropriate steps had been made by Organization on property this case is now before the Second Division of the National Railroad Adjustment Board.

The Board, in the instant case, fails to appreciate fully Organization's distinction concerning whether car No. MCPX 2303⁴ was "temporarily repaired" or "temporarily put back together" by Claimants on February 23, 1980 in view of Carrier charge that Claimants "... were negligent in the repairs made to the coupler...". The critical issue, in the mind of the Board, which must go beyond semantic distinctions is whether this car was in safe operating condition after February 23, 1980 for yard movement and if not who was to blame. Hearing evidence indicates that the probable cause of the March 2, 1980 accident was that the cross key retainer lock had not been properly installed when the car coupler had been re-assembled on February 23, 1980. Claimant Adams allegedly reinstalled the retainer when re-assembly took place and Claimant Bellville as Write-up Man had primary responsibility for car inspection after this procedure was completed. At no time did Claimant Bellville state after February 23, 1980 to superiors nor to anyone else, according to investigation transcript, that car No. MCPX 2303⁴ was unsafe for yard movement.

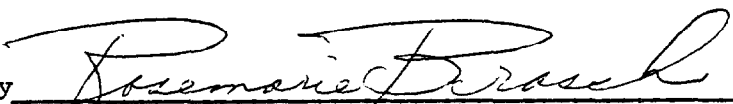
The role of the Board in its appellate function in this and other discipline cases is not to substitute its judgment for that of Carrier, but to determine if Carrier has met the test of substantial evidence. The Board's determination in the present case is that Carrier has done so and the Board will not disturb Carrier's position on this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1982.