

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That Laborer Larry Eskridge was unjustly disciplined from May 11, 1979 to June 10, 1979.
2. That accordingly, the National Railroad Passenger Corporation be ordered to compensate Laborer Eskridge for all time lost between May 11, 1979 and June 10, 1979, with all benefits and rights restored. Further that the fifteen (15) day deferred suspension be removed 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 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.

The Claimant began employment with the Carrier on March 2, 1975. On April 17, 1979, he was assigned to fuel Locomotive #293, Train #21. Proceeding normally, he attached the Houston fitting with automatic cut-off device, put the drop pan down, then went to the fuel truck to put it in operation. Approximately eight or ten minutes thereafter, the fuel truck started to bog down. Claimant returned to the truck to rev it up. He then heard fuel spilling and immediately shut off the fuel. According to Claimant, the Houston fitting malfunctioned. Thirty to forty gallons of fuel spilled onto the ground. On May 10, 1979, Carrier issued a notice of discipline assessing a fifteen (15) day deferred suspension, which activated a previously deferred thirty (30) day suspension.

The position of the Organization is the Carrier suspended the Claimant unjustly. Organization contends cited Rules H and F of NRPC Rules of Conduct are not part of Controlling Agreement and should not be the basis for discipline. Irrespective of these Rules, there is no proof in record Carrier proved Claimant worked in an unsafe manner.

Initially, we find the charge relating to Rules H and F of NRPC to be without merit. The Carrier has a right to establish reasonable rules of conduct for guidance of employees. The record indicates Claimant was aware of previous

problems with Houston fitting. On two separate occasions, he reported such defects. Claimant also testified that some engines have defective gauges which cause difficulty in assessing the amount of fuel in the engine. Despite this admitted knowledge, Claimant left the fuel nozzle unattended and a spillage occurred.

Review of this record supports the Carrier's determination Claimant failed to act in a safe and cautious manner in order to guard against loss and damage. There is no basis upon which to alter the Carrier's imposition of discipline.

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 21st day of April, 1982.