

The Second Division consisted of the regular members and in addition Referee Albert A. Blum when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the agreement when it unjustly disciplined Electrician Dwight Whiteman with a thirty day deferred suspension with a one (1) year probationary period on December 19, 1979.
2. That, accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to clear Mr. Whiteman's record in relation to this case and withdraw the discipline which was assessed.

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, Dwight Whiteman, inspected Locomotive 954 at the Latta, Indiana facility to check for its compliance with Federal Railroad Administration rules and instructions. He did the assignment during the evening of September 11, 1979. At about 1:45 a.m. of the next morning, Roundhouse Foreman Jerry Reed signed the inspection report based upon the Claimant's earlier inspection and the locomotive took off for Louisville, Kentucky. During the day shift, FRA Inspector S. W. Weeks of Louisville prepared a special notice of repairs for Unit 954 which required it to be shut down and returned to Latta for repair. Inspector Weeks found twelve different defects in Unit 954.

The Organization believes that the Carrier's discipline was "arbitrary and capricious". It first feels that the hearings were unfair in that the conducting office put his own opinion into the record and asked improper questions. Second, the Organization states that if the twelve defects existed after the Claimant inspected the unit during the evening of September 11, Foreman Reed should have found them before releasing the locomotive for road service since he signed the inspection report. In fact, Foreman Reed said he had not detected several of the defects discovered by the FRA inspector.

The Organization argues that since the Carrier failed to meet its burden of proof that the Claimant was responsible for the defects, the Organization feels that the Claimant is innocent of the charges against him.

On the other hand, the Carrier notes that the Claimant had claimed he had inspected the unit according to FRA rules and found no defects. Yet, twelve hours later, an FRA inspector found twelve defects. The Carrier points out that the Claimant says he had checked certain things visually, that his subordinates had checked other items but he admitted that these subordinates were not qualified to do a complete FRA inspection, that he assumed responsibility for the proper inspection when he signed DE 602, and that he could not see how Unit 954 could have developed all twelve defects in the twelve hours between his inspection and the FRA inspection.

Before dealing with the substantive issue in this case, the Board feels that although the hearing was not perfect, nothing in the hearing prejudiced the case against the Claimant. The Board thus can deal with the substantive issue as to whether the evidence satisfied the need for burden of proof to justify discipline and if it did, then, as past Board awards declare, this Board will not interfere with the Carrier's discipline if it were not "arbitrary and capricious".

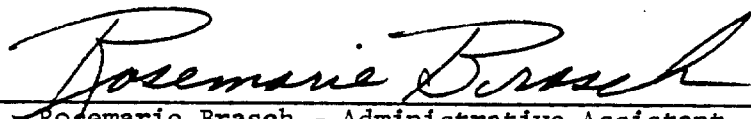
Burden of proof does not mean that one has to see the person do whatever he is charged with doing. In this case, the Claimant inspected the locomotive and twelve hours later, the FRA inspector found twelve defects. Even the Claimant could not explain how all of these defects could have developed in the short time between his inspection and the FRA inspection unless, in fact, some, if not all, were missed by the Claimant during his inspection. Consequently, the Carrier met its burden of proof. The Board, therefore, does not see any reason why it should disturb the Carrier's 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 30th day of June, 1982.