

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers  
{ Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Eddie D. LeFlore was unjustly dismissed from service of the Carrier following trial held on September 18, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned Eddie D. LeFlore whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, Mr. E. D. LeFlore was employed as a Laborer at the Carrier's Blue Island Repair Track at Blue Island, Illinois for a period of ten years prior to the incident that resulted in his discharge on September 24, 1980 for the following offense: in connection with movement of CNW locomotives 5091 and 5079 without protection on the point and derailment of CNW 5079, and for damage sustained to IHB locomotives 8729 when collision occurred on the rip track lead at approximately 2:00 P.M., September 10, 1980.

Mr. LeFlore testified that he moved two CNW locomotive units, because he had observed three Conrail engines that he thought were going to tie up the "rip lead". He testified that in making the move at 2 or 3 miles per hour he was looking out the window, sounding the horn and bell, and that IHB locomotive 9729 was obstructed from his vision. He testified that he made this move without protection on the point. He further testified that a person flagged him down and he threw the brakes on the CNW's, which applied slow and he hit the IHB 8729.

This resulted in CNW locomotive 5079, having two wheels off the track, which were rerailed by using blocks. There was no damage to the CNW unit or the track. IHB unit 8729 had a crack in the middle of the coupler. The Carrier estimated that it cost \$1,500 to \$2,000 to repair this unit. The Claimant's representative questioned and the Enginehouse Foreman responded as follows on this point:

"Mr. Franiak: You said it costs \$1,500 to \$2,000 to replace or to for the damages sustained to that Harbor. Are you saying that it's \$2,000 to put in a coupler?

Mr. Fenolio: Well, you got to take into consideration the deflection on the generator. They have to check that out with the, including the labor involved, because you are talking a tenth of an inch, if that is out of line, for the main generator."

There is no doubt that Mr. LeFlore is responsible for violating Safety Rule 4328. Mr. LeFlore straightforwardly admitted his full responsibility in this very serious matter. We have considered the fact that Mr. LeFlore had been dismissed for insubordination and violation of a letter of instruction pertaining to Blue Flag protection in early 1977, and had been returned to service for a period of some three and one half years at the time of the incident of September 10, 1980. No evidence of record indicates that Mr. LeFlore had been disciplined in this period prior to September of 1980. And, this individual who had ten years of service in 1980, was considered by his foreman as an employee who did his job. We believe that the discipline has served its purpose and that he should be reinstated to service with all rights unimpaired, but without back pay or back benefits. It should be made very clear to Mr. LeFlore that this is his last opportunity to demonstrate that he can comply with all of the Carrier's Safety Rules, at all times; and that his reinstatement is on a last chance basis.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of July, 1983.