

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 9598
Docket No. 9405
2-N&W-QM-'83

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (Brotherhood of Railway Carmen of the United States and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it unjustly assessed Carman G. E. Wright a five (5) day deferred suspension, which resulted in Carman G. E. Wright serving a fifteen (15) calendar day actual suspension starting on Monday, May 12, 1980, through Monday, May 26, 1980, inclusive, as a result of investigation held on April 17, 1980, at Frankfort, Indiana.
2. That the Norfolk and Western Railway Company be ordered to remove the five (5) day deferred suspension assessed against the service record of Carman G. E. Wright on May 8, 1980, compensate him for all time lost as a result of being required to serve a fifteen (15) calendar day actual suspension, starting on Monday, May 12, 1980, through Monday, May 26, 1980, inclusive, as mentioned in carrier's letter dated May 8, 1980, and make him whole for all contractual benefits, including seniority and vacation rights, holiday pay, health and welfare benefits, that he may have lost during the period of unjust suspension from work.

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 is employed as a Carman at the Carrier's Frankfort, Indiana car repair facility and had been so employed for approximately twenty-six (26) years when the following incident occurred.

On March 4, 1980, he was repairing a freight car with another Carman. The job required them to jack the box car and remove the truck from underneath it. To do this, the Claimant allegedly leaned over the side frame of the truck and removed the center pin from the center plate. He had not used blocks or horses under the car to safeguard it from falling.

The above incident was observed by Car Foreman Klutzke, who charged the Claimant with violation of Safety Rule 1303:

Safety Rule 1303

When a car or other equipment with trucks is jacked and the trucks removed, the jacked equipment must be supported by horses, trestles or blocking; and employees are prohibited from going under such equipment until the supports have been placed.

A formal investigation was held on April 17, 1980. The results of that investigation were transmitted to the Claimant in a May 8, 1980, letter from E. F. Campbell, Master Mechanic:

As result of the investigation held against you on April 17, 1980, a five (5) day deferred suspension will be assessed against your service record.

However, since you failed to maintain a clear record during the probationary period of discipline assessed on December 21, 1979, you will be required to serve that discipline in its entirety.

Consequently, you will be required to serve a fifteen (15) calendar day actual suspension...

The Organization believes that the Carrier did not meet its burden of proving the Claimant's guilt and that it violated Rules 32 and 33 of the current agreement regarding employee rights to just and fair treatment. At the investigation the Claimant did not recall the alleged incident, nor did his working partner, Carman T. M. Herman. Furthermore, the Organization asserts, Foreman Klutzke did not inform the Claimant on the day in question that he had violated a safety rule.

Also, there is no record of the car number and initial. The Organization notes that the April 17 investigation took place thirty-four (34) days after the alleged incident of March 4, thus giving the Carrier ample time to get the car number and initial from its records.

Finally, the Organization charges, the Claimant was being harassed by Foreman Klutzke and General Foreman Hill. It notes that twenty-three (23) of his fellow employees signed an affidavit to that effect (Employee's Exhibit A), and that it has never heard of the Carrier's "rule" that a third safety violation will automatically result in a formal investigation.

The Carrier maintains that the investigation produced sufficient evidence to confirm the Claimant's violation of Safety Rule 1303. Foreman Klutzke testified that he personally observed the Claimant remove a center pin without safeguarding the freight car from falling. He also testified that he brought the violation to the Claimant's attention at the time.

The Carrier also notes that the Claimant's main defense is that he does not recall the incident. And his co-worker, Mr. Herman, did not testify that the incident never occurred; rather, he acknowledged that while he did not see it happen, it possibly could have happened.

The Carrier argues that it did not violate Rules 32 and 33 since the entire investigation was conducted in a fair and impartial manner.

With respect to the degree of discipline, the Carrier notes that the Claimant has committed previous safety violations. Also, his previous 15-day deferred suspension resulted from a violation which the Claimant did not appeal. Accordingly, the suspension for the instant claim is the only one subject to review by the Board.

The Board has carefully considered the arguments of both parties and concluded that the record supports the Carrier's position. Foreman Klutzke's testimony was forthright and simple: he saw the Claimant remove the pin without blocking the car and confronted him about it at the time. In contrast, the Claimant's testimony is rather cloudy: he doesn't remember the incident. And the testimony of the Claimant's co-worker does little to illuminate the incident, since he didn't see anything but testified that "it is possible" the violation could have occurred. It therefore appears to the Board that the Carrier's credibility decision favoring the testimony of Foreman Klutzke was reasonable. (The propriety of a carrier relying on the testimony of a supervisor when such conflicts with that of an employee has been well established in previous Board decisions. See Second Division Awards 4981 and 7542.)

The Board notes that the Carrier was unable to specify the number or initial of the freight car involved, but concludes that this gap in the record does not carry sufficient force to set aside the Carrier's disciplinary decision. The fact remains that the evidence against the Claimant is convincing.

The Organization's charge of harassment against the Claimant by two foremen is most serious. The abuse of supervisory authority in such a fashion can have a devastating impact on the work related behavior of entire work crews. In the instant case, however, there is insufficient evidence to support the charge. The affidavit from fellow workers does not identify any specific incidents of harassment, it merely reflects opinion. This Board must rely on facts, to the benefit of employers and employees alike.

Likewise, the record does not contain sufficient evidence to convince the Board that the Claimant received anything but fair and impartial treatment from the Carrier. He was apprised of the charge against him and had full opportunity to refute it during the investigation.

Finally, it appears to the Board that the discipline invoked was not excessive. Working under a jacked freight car without supports underneath as a safety precaution could result in the loss of life or limb not only to the

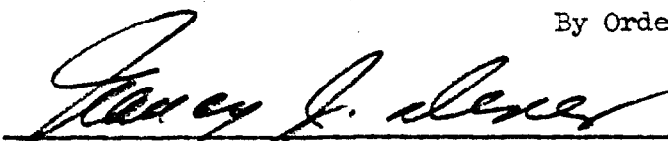
person pulling a center pin but to a co-worker or bystander as well. This Board is fully supportive of disciplinary measures designed to prevent such incidents from occurring. And, in view of the Claimant's previous uncontested safety violations, the five-day suspension seems well within the range of appropriate sanctions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August, 1983.