

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

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the terms of the current Agreement Machinist R. A. Cox (hereinafter referred to as Claimant) was improperly dismissed from service on December 10, 1979.
2. That, accordingly, the Carrier be ordered to compensate Claimant for all wage loss incurred from date of dismissal, December 10, 1979, to June 18, 1980, which was the date he was restored to service without prejudice.

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 employes 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 were given due notice of hearing thereon.

Claimant, R. A. Cox, was advised by letter dated November 5, 1979 to appear at an investigative hearing on November 8, 1979. He was charged with violation of Carrier General Rules B, L and M and General Regulations Rules 700 and 4090 from Rules Governing Duties and Department of Employees, Safety Instructions and Use of Radio. The hearing was held, after postponement by the Organization, on November 15, 1979. Claimant received notice of dismissal on December 10, 1979. Claimant was subsequently restored to service on June 18, 1980 and claim for lost wages was continued pursuant to current Agreement provisions. Case was ultimately docketed before the Second Division of the National Railroad Adjustment Board. General Rules, and General Regulations 700 and 4090 of the Carrier read, in pertinent part:

"Rule B. Employes must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the railroad for an explanation."

"Rule L. Employes while on duty must be alert and attentive, and in case of danger to the company's property or interests, they must unite to protect it."

"Rule M. Employees must exercise care to prevent injury to themselves or others.

Employees must inform themselves as to the location of structures or obstructions where clearances are close and must take necessary precautions to avoid injury at such locations.

Employees must expect the movement of trains, engines, cars or other moving equipment on any track, at any time, in either direction.

Employees must not stand on the track in front of an approaching engine, car or other moving equipment for the purpose of boarding same.

Train and engine service employees must not occupy the roof of any freight car or caboose under any circumstances. Other employees whose duties require them to occupy the roof of a car or caboose may do so only when equipment is standing."

"Rule 700. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

"Rule 4090. Engines must not be left without a man in charge, except at designated places and under authorized conditions, and must not be left standing so they will block or foul adjacent tracks."

On November 4, 1979, after train OS-31 arrived at the Carrier yards in Ogden, Utah, Claimant and a co-worker, who was an electrician, were instructed by their Supervisor to remove one locomotive unit (U.P. 3348) from the consist of power of this train which included that unit and three others (S.P. 9396, 9315 and 9177). Approximately fifteen (15) minutes later, after unit U.P. 3348 had already been removed, the three other units which had been left unattended began to roll through the yard area striking a switch engine, a flat car and two (2) cabooses. Extensive equipment damage resulted. The record of the instant case shows that both the electrician and the Claimant were subsequently charged with contravention of Carrier rules. Claimant was specifically cited for failure to properly secure the locomotives with sufficient handbrake to keep them from rolling free and striking other equipment.

Procedurally, the Organization has argued before the Board that the instant case should be sustained on technical grounds since the Carrier's submission contains no signature. For support, the Organization makes reference to Third Division Awards 23170 and 23283. Neither Award provides basis for sustaining claim, however, since the latter does not rule on any provision of Circular 1 of the National Railroad Adjustment Board, issued October 10, 1934 and the former makes reference to an ex parte submission document which is apparently not similar to that of the Carrier in the instant case. Circular No. 1 states, in pertinent part:

"SIGNATURES: All submissions must be signed by the parties submitting the same."

Black's Law Dictionary defines signatures:

"SIGNATURE: The act of putting down a ... name at the end of an instrument to attest its validity, the name thus written. A 'signature' may be written by hand, printed, stamped, typewritten ... etc."

Given Black's definition, cited in Award 23170, the Carrier submission in the instant case contains a signature and procedural objection by the Organization is dismissed.

With respect to the merits of the case, a review of the record shows that oral if not written instructions had been issued on the property concerning the use of handbrakes on locomotives because of yard grade. This was known to the Claimant. Claimant testified also that supervision had issued to him such instructions for specific units in the past and he further testified that as a machinist he did not need to be supervised for each and every move he made. Since, therefore, the yard grade conditions and the potential roll-out problems were known to Claimant he must share responsibility for the accident in question with the electrician who admitted his culpability de jure by accepting reinstatement with leniency after he was discharged from service.

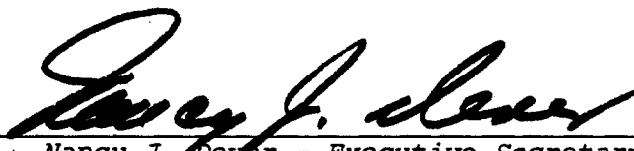
The Board can find nothing in the record to warrant conclusion that the Carrier acted in an arbitrary, unreasonable and unjustifiable manner in assessing discipline in the instant case and it will not disturb Carrier determination in this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1983.