

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
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(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Railroad Company be ordered to restore Machinist S. A. Green to service and compensate him for all wages lost during this period until restored, at the prevailing machinist rate of pay.
2. That Machinist S. A. Green be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 36 of the prevailing agreement effective January 1, 1947 as subsequently amended.

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 waived right of appearance at hearing thereon.

Claimant, S. A. Green, entered the service of the Carrier on June 6, 1972 as a Machinist. On April 27, 1981 Claimant was performing his duties and moved a total of 6 locomotives without performing a test to determine if they were properly coupled. Four of the locomotives broke away from the others and uncontrollably sped into another track and collided with other units derailing 2 of the locomotives and causing serious damage to all 6 locomotives. The action required that Carrier take all 6 locomotives out of service for costly repairs and forced the Carrier to experience delays to trains because of a lack of power.

As a result of the above occurrence, Claimant was held out of service and was notified to attend an investigation on May 6, 1981 in connection with the following charge:

"Derailment IHB locomotives 9006 and 8862 on April 27, 1981.

Excessive damage to IHB locomotives 8780, 9006, 8862, 8783, 9205 and 9207 on April 27, 1981.

Violation of Hostling Instructions.

Violation of safety rule 4328(a), (b), and (c)."

Following an investigation where the Claimant was found guilty as charged, Claimant was dismissed from the service.

The Organization argues that the Carrier acted in an arbitrary and capricious manner when it dismissed the Claimant from service without any proof that the Claimant was guilty. The Organization contends that the Claimant complied with the instructions and that the bulk of the Carrier witnesses testified solely concerning the damage caused by the accident which evidence is irrelevant to the charges against the Claimant.

The Carrier contends in a procedural vein, that Employee's Statement of Claim does not conform with the requirements of Circular No. 1 of the National Railroad Adjustment Board (NRAB). The Carrier contends that the Employee's Statement of Claim neither states the question involved nor briefly, or otherwise, describes the nature of the dispute. Carrier contends that such a statement is insufficient and therefore should be denied in its entirety.

On the merits of the case, Carrier contends that there was substantial evidence adduced at the investigation to show that the Claimant was guilty of the charges against him. Carrier points out from the testimony that the Claimant admitted that he did not perform the "static test of independent brake" prior to moving the locomotives. Carrier also argues that Claimant admits that he did not check to see if the engines were coupled before he made the move. Carrier contends that the Claimant further admitted that the fact that the engines were not coupled was the reason for this serious accident.

Carrier also points to the fact that the Claimant testified that he did not receive the "hostler instructions" but that when he was shown a copy with his signature on it as having received a copy, he denies that it was his signature. Carrier also submitted to the Hearing Officer other examples of Claimant's signature in order to demonstrate that Claimant had in fact received the instructions which he did not obey on the day in question.

This Board has reviewed all of the evidence in this case and it finds that the case is properly before the Board. This Board rejects the argument of the Carrier that the Statement of Claim was insufficient to comply with the rules. Carrier was on notice that the Organization was raising an issue concerning the Claimant's dismissal. Although the Statement of Claim did not specify every single detail that was being raised by the Organization, it certainly was clear enough to the Carrier that Claimant was denying the charges and was seeking his job back. Consequently, the procedural issue raised by the Carrier is rejected by this Board.

However, with respect to the merits of the case, it is clear that the Claimant did violate the safety rules when he moved the six locomotives on the day in question. Claimant admittedly did not perform the required test which he is required to perform prior to operating the locomotives. His failure to perform those tests led directly to the accident which caused the serious damage to company property and risked injury to employees. In such a situation, the Carrier has a right to consider discipline of the employee.

As was stated in First Division Award No. 11887:

"The Rule here was violated, and in light of the great hazard which might have arisen from the failure to observe it, we cannot say that the discipline imposed was so severe as to require us to hold that it was manifestly unjust."

See also First Division Awards Nos. 14768 and 16969.

Hence, it is clear that by virtue of the fact that Claimant violated the several safety rules and did not follow instructions, the Carrier was entitled to discipline him.

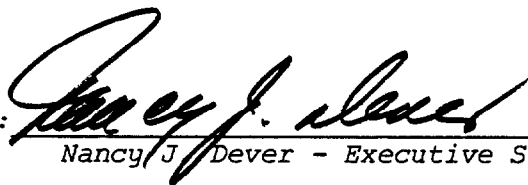
It is also well settled that this Board will not set aside discipline or substitute its judgment for the judgment of the Carrier unless the action taken by the Carrier is unreasonable, arbitrary, or capricious. There is evidence in the record that the Claimant had been disciplined on other occasions for improperly performing his duties, improper inspection, violation of safety rules and damage to company property. In view of that past record of the Claimant, it is impossible for this Board to find that the action taken by the Carrier in response to his latest violation of safety rules was inappropriate.

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 5th day of September, 1984.