

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(The Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler W. H. Bishop was unjustly suspended from the service of the Carrier, for 5 working days.
2. That accordingly, the Carrier be ordered to:

To compensate the aforesaid employe for the 5 working days, that he was suspended, at the pro-rata rate of the position he held at the time he was suspended.

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.

Following a hearing, the Claimant received a five-day suspension for violation of Rules No. 6 and 773 which respectively provide: 1) carelessness, negligence and/or indifference in the performance of duties will not be condoned; and 2) motor vehicles must be operated in a safe manner regardless of urgency or importance of trip.

On July 24, 1979, the Claimant, a Fireman and Oiler, upon the request of a train crew, drove the crew to their work site in his assigned Carrier truck. After dropping them at a caboose, the Claimant left his truck unattended with the motor running and entered the caboose to use the rest room facilities. In his absence, the truck slipped out of park and began to roll backward. He immediately left the caboose in an attempt to stop the truck, injuring his ankle in the process.

On these facts the Carrier determined that the Claimant was careless in the performance of his duties, which resulted in injury to himself. It stresses that the main offense was the Claimant's failure to safely operate a motor vehicle. It notes that had he not been involved in the unauthorized activities of driving a train crew and using the caboose rest room, this incident would have been averted.

The Organization counters that the Carrier was arbitrary in its imposition of discipline. It asserted that as a matter of course, motor vehicles are left running while the driver is absent but that this particular truck was defective, a fact not known to the Claimant. Moreover, it asserts that transportation of train crews by other crafts was a common occurrence.

After a review of the entire record, the Board finds substantial support for the Carrier's determination. Regardless of work-site habits or unknown defects, leaving a truck unattended while its motor is running is a violation of specific Carrier rules and contrary to accepted common sense safety standards. Indeed, the Claimant admitted unsafely operating a motor vehicle and asserted that he would never repeat that offense. Although transportation of the train crew is not itself a negligent act, it led to the negligence found here. However, we do not see this as a direct cause of the offense committed.

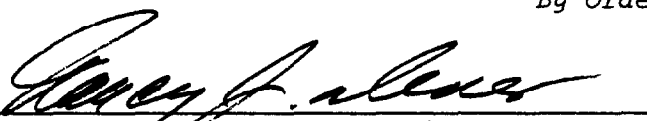
Normally, such an offense would warrant a five-day suspension. However, in view of the Claimant's admission that he should not have acted as he did we find that a reprimand is an appropriate form of discipline. The claim is sustained insofar as the penalty is concerned. The penalty shall be modified to a reprimand and the Claimant shall be compensated for wages lost.

A W A R D

Claim is sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.