

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Washington Terminal Company

Dispute: Claim of Employes:

1. That the Washington Terminal Company violated Rule 29 of the Controlling Agreement when Carman George Jackson was unjustly suspended for three (3) days as a result of investigation held on January 13, 1983.
2. That accordingly the Washington Terminal Company be ordered to reinstate Mr. Jackson with compensation for his net wage loss, seniority and vacation rights unimpaired, and made whole any loss due to health and welfare benefits not continued.

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.

On December 5, 1982, Claimant was a car repairman of over twenty-one (21) years service with the Washington Terminal Company, Washington, D.C. On that date, Claimant and Carman D. L. Justus performed a terminal brake test on a northbound train. After proper notice and hearing on a charge of failure to properly perform this test, Claimant received a seven (7) day suspension. The suspension was subsequently reduced to a three (3) day suspension. After proper handling on the property, the matter is now before this Board on appeal.

The Organization argues that the evidence failed to sustain the charge of improper performance. The evidence before this Board is circumstantial in nature, and therefore, this Board must find that Claimant's failure to properly line up and perform the terminal brake test is more probable than any other allegation of fact.

The evidence of record establishes that Amtrak Train 94 was tested by Claimant, and accepted by the Engineer at Washington without exception. In route to Baltimore, the Engineer testified that he applied the brakes once without difficulty, but at the second application it was his opinion that the train traveled an excessive distance before achieving the necessary reduction in speed.

The evidence is uncontradicted that when the train attempted to stop at the Baltimore-Washington International Station (BWI), it was necessary for the train to be placed in emergency. The train overshot the BWI Station by an entire train length. The train Conductor and Engineer testified that they observed smoke coming off the engine brake and the first three (3) cars, suggesting that no brakes were operating on the rear four (4) cars of the train.

After obtaining permission to back the train into BWI, the rear Brakeman inspected the wheels between the third and fourth cars. The testimony of the Conductor was that the Brakeman found the wheels on the third car were hot, but the wheels on the fourth car were not. The rear Brakeman who made the initial inspection between the third and fourth cars did not testify at the hearing. The Engineer asserted that he told a Fireman on the train that the brakes were not functioning in a proper fashion, however, the Fireman did not testify.

Prior to arriving at BWI, the Conductor testified he was not aware of any difficulties with the brakes, but that the approach to BWI was faster than usual. No evidence was presented that the brake signal lights at BWI were not properly working, nor is there evidence that the inspection at BWI involved actual testing of the brake pads application to the discs.

The train then proceeded cautiously to Baltimore where it was met by a Car Inspector. The Car Inspector testified that he began his inspection at the head end of the train and worked his way back until he got to the junction of the third and fourth cars. He stated that he found the angle cock on the north-bound end of the fourth car partially closed. The Car Inspector further testified that when he found the angle cock on the fourth car partially closed, he first moved the valve into the open position. He testified that he proceeded to close the angle cock on the rear of the third car, parted the hoses between the third and fourth cars, and at that moment the four (4) rear cars went into emergency. The Car Inspector concluded that it was his opinion that the four (4) rear cars had sufficient air pressure to work the brakes. The head three (3) cars of the train did not go into emergency when he first opened the angle cock on the fourth car. The Car Inspector could not say whether air was going to the rear four cars, only that from his experience there was air in those cars.

The Carrier argues vigorously that the facts stated above constitute circumstantial evidence of sufficient quality and quantity to meet its burden of proof that Claimant failed to properly perform his duties.

The Board is of the considered opinion after long and careful review of the entire record that it would be unduly speculative for the Hearing Officer to have inferred that the Claimant's failure to properly brake test the train is the probable conclusion from all the evidence presented. The missing testimony of the Fireman and Brakeman may have been that quantum of evidence which would have led this Board to another resolution of this appeal. The testimony of the Car Inspector is wholly inconclusive as to the cause of the train's failure to stop at the BWI Station. The remaining evidence is too speculative to find that Claimant did not test Train 94, and find that the brakes functioned properly.

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Award No. 10262
Docket No. 10535
2-WT-CM-'85

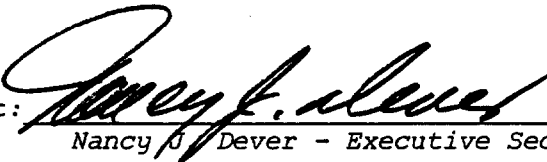
In accordance with Rule 29 of the Agreement, Claimant shall be compensated for his net wage loss, if any, resulting from said suspension.

A W A R D

Claim 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 13th day of February 1985.