NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award Number 10672
Docket Number 10572
2-SOU-CM-'85

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
(Southern Railway Company

Dispute: Claim of Employes:

1. That Carman W. R. Crawford, Atlanta, Georgia, was unjustly suspended from service for a period of twenty (20) work days, June 24, through 29, and July 14, through August 4, 1982.

2. That accordingly, the Southern Railway Company be ordered to compensate Carman W. R. Crawford for pay lost during this twenty (20) working day suspension.

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.

The Claimant was employed as a Carman at Carrier's Inman Yard, Atlanta, Georgia. A preliminary investigation was held on June 24, 1982, at which time Claimant was charged with attempting to slow down operations at Inman Yard by improperly changing air hoses on Train No. 172 earlier that same day. At the conclusion of the preliminary investigation, the General Foreman dismissed Claimant from Carrier's service. After a formal investigation conducted on July 1, 1982, the Claimant's dismissal was modified to twenty days actual suspension.

The Organization's initial contention is that the Claimant was unfairly and unjustly treated in that his suspension was not for just cause in violation of Rule 34 of the controlling Agreement. A careful review of the lengthy record of the formal investigation which consists of 165 pages of testimony by fifteen separate witnesses does not lend support to this contention.

The facts are that Claimant was assigned to work Train No. 172, at 12:05 A.M.on June 24, 1982. The train consisted of twenty-five cars on Track No. 16, and thirty-nine cars on Track No. 15. At approximately 2:00 A.M. Claimant was found by the General Foreman to be still at work on the twenty-five cars on Track 16. He had not performed any inspection of the thirty-nine cars on Track 15. During the two hour period when Claimant worked Track No. 16 he had removed and replaced eight air hoses among the twenty-five cars.

The testimonial evidence overwhelmingly establishes that the Claimant's replacement of the eight air hoses on the twenty-five cars situated on Track No. 16 constituted an unprecedented number of repairs. The charging Foreman testified that the normal time period to work a comparable number of cars was one-half to three-fourths of an hour, and that only 1 or 2 air hoses per Carman, per shift would normally be repaired. This time estimate of three-fourths of an hour was substantiated by the testimony of four (4) car Foremen and two of Carrier's Supervisors. The number of air hoses which would normally be changed per shift varied between 2 and 5 according to the Carrier's witnesses.

The testimony of Carrier's witnesses remained unrebutted upon conclusion of the Claimant's defense. Two of Claimant's witnesses testified that they did not know of any time when 8 air hose changes were performed in one night. Another of Claimant's witnesses stated that while 8 hose changes on one train were possible, it had never occurred when only twenty-five cars were involved.

As acknowledged by Carrier's *Charging* Officer, the length of time required to change the 8 air hoses is not the issue before this Board, but rather the manner by which Claimant proceeded in the performance of his duties on June 24, 1982. The Organization cites General Bulletin No. 12-78's admonition that, "All carmen working air on trains are required to change at least four air hoses per shift" as justification for Claimant's actions. The Board finds Carrier's explanation that there is no proof Bulletin No. 12-78 was ever enforced to be a self-serving comment, and without support in subsequent notices of a change in policy. Nevertheless, this Board refuses to read into such a notice justification for changing perfectly viable air hoses for the sake of change alone. The fact that excessive, improper repairs in unheard of numbers were made by Claimant supports a finding of guilt as to the charge. Five of Carrier's witnesses, including the air brake instructor and Assistant Superintendent of the Car Department, testified that only 2 of the eight air hoses were of a condition which required that they be changed.

Despite a degree of ambiguity in Bulletin No. 12-78 and its enforcement on the property, Claimant was personally instructed on March 25, 1982, by his Foreman on how to look for faulty air brake hoses in need of repair. The evidence shows that Claimant was qualified to inspect air brake hoses for defects. He offered no physical or testimonial evidence that the six air brake hoses which Carrier argued should not have been replaced were in fact defective, or that he was instructed on March 25, 1982, to make the kind of unnecessary repairs now at issue. As evidenced by his active participation at the formal investigation, Claimant was aware of the American Association of Railroads ("AAR") requirements contained in Interchange Rule 5, *Section A, pertaining* to the renewal *of* air brake hose. The requisite conditions for hose replacement outlined by the AAR were present in only two of the six hoses Claimant replaced.

The Organization's contention that closer supervision would have precluded any wrongdoing by Claimant is without support in the record. The Board finds that Claimant knew or should have known on June 24, 1982, the conditions and requirements necessary before air brake hoses were to be replaced, and the consequences to the Carrier of possible AAR penalties for any unnecessary work. There is sufficient, credible evidence of record from which it is reasonable to infer that Claimant attempted to slow down the operation of Inman by making clearly improper air brake hose repairs to Train No. 172 in excessive numbers. Upon consideration of all the facts and evidence submitted, this Board concludes that the penalty assessed was neither arbitrary, excessive nor capricious.

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 *4th day of December 1985.*