

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the terms and/or provisions of the controlling Agreement, when on the date of October 7, 1982 they subjected Claimant, Carman Robert P. Jones, Curtis Bay, Baltimore, Maryland, to an unjust, unfair, and partial hearing allegedly as a result of a violation of Blue Signal Circular CDT-82, Section 5.01 on the date of September 18, 1982, at Curtis Bay, thusly further subjecting Claimant to unfair and arbitrary discipline of five (5) calendar days actual suspension, commencing with the date of November 5, 1982 through November 9, 1982.

2. That Carrier violated Rule 32 of the controlling Agreement with regard to the instant case.

3. That accordingly, Carrier be ordered to compensate Claimant Jones for all time lost as a result of such arbitrary discipline, including any and all overtime to which entitled during such suspension, etc., that he be made whole as though he were never subjected to such suspension, and that his record be cleared accordingly.

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, Robert P. Jones, was employed by the Carrier at Curtis Bay, Baltimore, Maryland when he was charged on September 28, 1982, "... with violation of Blue Signal Circular Form CDT-82, section 5.01 on Saturday, September 18, 1982 at approximately 11:30 A.M. at Curtis Bay, Maryland." After a formal investigation conducted on October 7, 1982, the Claimant was found guilty and disciplined with a five (5) day actual suspension from November 5, 1982 through November 9, 1982.

Blue Signal Circular Form CDT-82, Section 5.01 provides:

"5.01 When workmen are on, under, or between rolling equipment on a track other than a main track:

- A. A blue signal must be displayed at or near each manually operated switch providing access to that track;
- B. Each manually operated switch providing access to the track on which the equipment is located must be lined against movement to that track and locked with an effective locking device;
- C. The person in charge of the workmen must have notified the Operator of any remotely controlled switch that work is to be performed and have been informed by the Operator that each remotely controlled switch providing access to the track on which the equipment is located has been lined against movement to that track and locked as prescribed in paragraph 7.00;
- D. If rolling equipment requiring blue signal protection as provided for in this rule is on a track equipped with one or more crossovers, both switches of each crossover must be lined against movement through the crossover toward the rolling equipment and the switch of each crossover that provides coupling access to the rolling equipment must be protected in accordance with subparagraphs (A) and (B) or (C); and
- E. If the rolling equipment to be protected includes one or more locomotives, a blue signal must also be attached to the controlling locomotive at a location where it is readily visible to the Engineman or Operator at the controls of that locomotive."

(Emphasis supplied).

On September 18, 1982, at approximately 11:30 A.M. Carrier's General Car Foreman approached Track No. 19 in the yard at Curtis Bay. The Foreman initially observed that the west end of the track had a lock at the switch, but no flag. As he walked toward the east end of Track No. 19, the Foreman testified he observed Claimant, and his fellow employees Vincent Romano and John Pawlowski inspecting and oiling journal boxes. The Foreman checked both switches at the east end of Track No. 19, but neither switch was locked. The Claimant testified that when he started to work the track it was locked and flagged at both ends, and he had personally locked and flagged the west end of Track No. 19. Claimant was preparing to leave for lunch with Mr. Pawlowski at approximately the same time the Foreman approached the track. He admitted that Track No. 19 had not been completely worked when he left the track to go to lunch.

Approximately a half-hour later the Foreman returned to Track No. 19 with the Assistant Car Foreman where they observed Mr. Romano oiling boxes and "jumping back and forth" between the cars on the track. The Foreman double-checked the east and west ends of Track No. 19 and found that the east end still had a flag and no lock, and that the lock had since been removed from the west end of the track. The Claimant admitted to the Foreman that at approximately 11:30 A.M. the west end was locked, but without a flag. Claimant testified he removed the lock when he passed the west end of the track for lunch, and left Mr. Romano working the east end.

The following exchange between the Claimant and the Hearing Officer is supportive of the Foreman's testimony, and substantiates finding of guilt:

"Q. Mr. Jones, when did you remove the flag from the west end of 19?

A. When we started walking up to the lunch room.

Q. Mr. Jones, why did you tell Mr. Teets that you were working the track without a flag?

A. I told Mr. Teets that the flag was up but I took it down and obviously Tony did not know that I took the flag down.

Q. Mr. Jones, why would you take the flag and lock off a track that you have not finished working?

A. Mr. Romano had about 10 to 15 cars on the track to work while I walked up to the west end without knowing Tony was still on the track working.

* * *

- Q. Mr. Jones, then again I ask why did you remove the locks from 19 when you knew that the track was not finished, or is it true that the track was not locked and flagged on the west end?
- A. I thought 19 track was completed so I removed the lock and flag from the west end. (Emphasis supplied)

The Organization opined that if the incident was as serious as the Carrier claimed it to be that when the Foreman first noticed the unsafe condition he should have taken immediate, corrective action. The Carrier acknowledged in argument that it did not sanction the Foreman's actions in this respect but that it was necessary to secure a witness to Claimant's Rule violations. It would have been far better had the Foreman placed a higher priority on the personal safety of Mr. Ramano, than to take the time to secure a corroborating witness. Safety in the industry must take precedence over the process of obtaining evidence which may or may not be necessary to enhance the success of a disciplinary proceeding. Claimant, however, acted so as to place himself and his fellow employees within a situation of potential, serious physical danger and cannot avoid his own duties and responsibilities.

The Organization posits that Claimant was not a workman "... on, under, or between rolling equipment," and that the Foreman did not see the Claimant working the cars. However, Claimant did admit that he worked Track No. 19 and left the track unprotected at the same time Mr. Romano moved back and forth between the cars. A work report form known as an L-265 prepared by Claimant indicated that Track No. 19 was locked and flagged between 10:50 A.M. and 1:00 P.M. Claimant's own testimony revealed that this car inspector's record was incorrect and misleading.

This Board finds substantial, credible evidence of record that Claimant violated the terms of the Blue Signal Circular in failing to ensure that a blue signal and locking device were properly in place at the switches providing access to Track No. 19 at Carrier's Curtis Bay yard on September 18, 1982. The Carrier has met its burden of proof, and this Board finds the discipline of five days actual suspension was neither excessive, arbitrary 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 8th day of January 1986.