

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

( Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (   
( Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That, as a result of an investigation held on August 23, 1983, Carman S. Grzelinski was suspended from service of The Belt Railway Company of Chicago for a period of four (4) days from August 25, 1983 through August 29, 1983. Said suspension is arbitrary, capricious, unjust, unreasonable and in violation of Rule #20 of the current working Agreement.
2. That The Belt Railway Company of Chicago be ordered to remove the discipline from Carman S. Grzelinski's personal record, and that he be compensated for all wage loss sustained, plus interest at the current rate account of said discipline and agreement violation.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Transcript of the Investigation accorded the Claimant discloses that he inspected Car CCLX 212, a tank moving empty, and found the "A" end draft gear to be defective (collapsed) in the east receiving yard. Accordingly, the Claimant issued a bad order card dated August 13, 1983, signing it as Inspector.

The car was subsequently placed on the repair track where it was inspected by an AAR Carman Checker and ultimately by the Lead Car Foreman on August 16, 1983.

In his letter to the Car Superintendent, the Foreman quoted the AAR Carman Checker as reporting that the draft gear was not defective and stated therein that he, the Foreman, also inspected the car on August 16, found the gear not to be defective and ordered the release of the car.

The AAR Carman Checker was called as a witness for the Carrier. He testified in pertinent part:

"We walked to the car and looked, but it wasn't collapsed, but the ears on the draft gear looked like it is shiny; like it was wearing.

"When the man bad ordered it, it was probably collapsed. After they humped it, the thing could have released. He took precautions. Better to be safe than sorry. Bad ordered the car.

"Q. Was the draft gear defective per AAR Field Manual?

"A. It wasn't collapsed, but you could see the wear marks, the ears on each side of the draft gear. They were shiny; weren't rusty. Like they were riding back and forth.

"Q. Was it defective for AAR rules when you inspected it?

"A. No. Like I said, it probably unstuck. It went back to its normal position, but the marks were there to show that the draft gear was sticking."

On the questioning of the AAR Carman Checker by the Claimant, it was disclosed that if he were inspecting cars in the yard in the train and the draft gear was collapsed, follower plate was against the body of the draft gear, he would bad order the car.

The Claimant further testified that the only way to see is to get under the car and look, inspect it, which he did. He found the follower plate completely against the draft gear where there was no play; nothing in between the follower plate and the body of the draft gear.

The Foreman who inspected the car three days later testified that when he inspected the car sitting on the repair track the draft gear was not collapsed, saw nothing broken and then ordered the car on its way. No repairs were made to the car.

Before we reach the merits, the procedural issues raised by the Petitioner must be addressed; i.e., precise charge, burden of proof and excessive discipline.

The precise charge is met when the one charged may reasonably understand the matter to be investigated. The notice was sufficiently precise so that there was no doubt as to the reason for the investigation. This is evidenced by the questions asked and cross-examination of the witnesses by the Claimant and his Representative.

We have weighed the record against the standard this Board has set for the burden of proof; i.e., that sufficient evidence of probative value be provided to support the charge. The Claimant was noticed to determine his responsibility, if any, for his bad ordering the car on August 13, 1983 and further charged with delay in the movement of the car as being unnecessary.

Nothing was developed in the record as to whether the car was or was not unnecessarily delayed. The record does not show when it was sent to the repair track, but it does show that the AAR Carman Checker observed it on August 15 and that the Foreman inspected it on August 16, the latter date being Tuesday. There is no showing when it left the repair track. The burden of proof on that part of the charge has not been met.

It is widely known and, in fact, generally mandated in the railroad industry that safety is of the first importance in the discharge of duty and that in case of doubt, the safe course must be taken.

Absent any showing that the bad ordering of the car was for reasons other than safety, we believe the action of the Claimant was warranted. We cannot, however, accept the Carrier's closing statement that this is by no means the first time that this former Carman delayed cars as result of bad ordering same for an alleged defect and upon inspection no evidence of a defect was found. That statement and proof thereof was not made part of the record on the property. We hasten to say that indiscriminate bad ordering of cars, if proven, cannot be condoned.

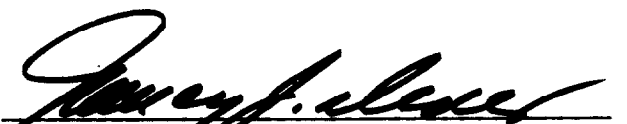
The claim will be sustained, but only for wage loss during the four day suspension. That part of the claim for interest at the current rate is without Rule support and is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of March 1986.