

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10829
Docket No. 10904
2-BRCofC-CM-'86

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: (
(The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That, as a result of an investigation held on September 9, 1983, Carmen L. Higen and W. Schmeier were suspended from actual service of The Belt Railway Company of Chicago, for fifteen (15) days, effective September 15, 1983 - September 30, 1983. Said suspension of Carmen Higen and W. Schmeier 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 the personal records of Carmen Higen and Schmeier, and to compensate them for all wage loss as a result of said fifteen (15) days' suspension, plus interest at the current rate on the amount of reparations due.

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.

The transcript of the Investigation accorded the Claimants consists of seventy-one pages and twenty-six exhibits. Several of the latter furnished by both parties are inferior copies that are impossible to read. At the time of the Investigation the exhibits were probably presented in original form and considered crucial. In their present reproduced condition, they are of no significant value.

However, the dispute is ours for evaluation, consideration and decision on the available record. It is disclosed that the Claimants inspected seven cars, observed oil seepage from many of the roller bearings and considered them bad order. At the time, each Claimant talked with the Car Foreman on duty and asked him if he wanted to inspect the cars before they were set to the repair tracks. The Foreman was at the Investigation as a

witness for the Carrier. He admitted talking with one of the Claimants but not the other and stated that he did not want to inspect the cars; that they would be inspected on the repair track.

In closing sequences of the interrogation, the Investigating Officer recalled the on-duty Car Foreman and addressed these questions to him; his answers follow each question:

"Q. Mr. Stec, in your conversation with Mr. Higens, he assured you that there was no doubt the cars were bad orders?

A. Yes.

Q. Mr. Stec, after being assured of this by an experienced carman, would you have done anything other than to tell him to set the cars out?

A. If they were bad orders, they would have to be set out.

Q. Mr. Stec, when requested to go down and look at the cars in question by Mr. Higens, did you feel it was necessary knowing the experience that Mr. Higens has?

A. I asked Mr. Higens if he was sure about the cars having leaking wheel bearings, and he assured me they were; I placed all judgment in Mr. Higens."

At about noon on September 4, the Lead Car Foreman was called by the Repair Track Foreman to witness what the latter had found on his inspection of the cars. The Lead Car Foreman's inspection disclosed none of the cars to be defective, per AAR Rule 36.

The Lead Car Foreman stated that when he inspected the cars he made a detailed inspection report for his own record. That record was read into the transcript and it showed that each of the cars named by number had oil seepage at all of the bearings on four cars and on three, seepage from all except a few which showed no leakage. The Lead Car Foreman testified, however, that he took no exceptions to any of the cars, per Rule 36 of the AAR Field Manual.

The Claimants were making a visual inspection of the cars in the train with the aid of a lantern - it was around midnight and dark. The inspections made by the Repair Track Foreman and the Lead Car Foreman were made in daylight, around noon, on the repair track.

During the Lead Car Foreman's interrogation by the Claimant's representative, he was asked if a Car Inspector is uncertain as to whether he should bad order a car or not, who should he apply to for instructions. The Lead Car Foreman's response was, "His car foreman."

The Organization has charged throughout the proceedings that the fifteen day suspension was unfair, arbitrary and capricious, concluding that it was a miscarriage of justice; that the Claimants properly performed their duties in their own interest and in that of the Carrier.

The Carrier's position is that the Organization has submitted no evidence to support its conclusions, and that there was no evidence to support the contentions of the Claimants that the roller bearings on the seven cars were defective.

We are not here, however, to pass judgment on whether the cars were or were not bad order for that is a responsibility of the authorized personnel of the Carrier. Nor, is it our function in discipline cases to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might have done had it been ours to determine. We are confined to reviewing the Carrier's decision. We may not set it aside unless we find it to be arbitrary, unreasonable or discriminatory.

In answering the appeals of the Organization at the intermediate levels, the Carrier Officers each stated in pertinent part:

" . . . Car Foreman Stec, when notified of the situation, instructed them to bad order the cars if they thought they were bad orders. Mr. Stec had no reason to doubt Mr. Higen and Mr. Schmeier since both are qualified carmen.

" . . . Also, I see no reason why Mr. Stec should have been required to view the cars to determine whether they were bad orders or not. Both Mr. Higen and Mr. Schmeier are qualified Carmen and were advised by Mr. Stec that if they thought the cars were defective to bad order them."

The Carrier referenced the essence of those statements, among others, in its submission to the Board.

It is clear that the Claimants were of the view that the cars were bad order. The on-duty Car Foreman accepted their judgment after he was apprised of the results of their inspection and was satisfied that each was a qualified Carman. That should have relieved the Claimants of fault, and we so find. We hold that the measure of discipline assessed in this particular dispute was arbitrary, and an abuse of discretion.

The Claim is sustained only for loss of wages during the fifteen day suspension, provided they would otherwise have been available for work during that period and at the rate of pay in effect during that time. The Claim for interest at the current rate on the amounts lost is not supported by any Agreement Rule and it 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1986.