

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11581
Docket No. 11428
88-2-87-2-99

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

1. That the St. Louis-Southwestern Railway Company violated the agreement between the St. Louis-Southwestern Railway Company and the Brotherhood Railway Carmen of the United States and Canada effective October 1, 1977, as amended, when Carmen S. J. Lozano and R. G. Lozano were withheld from service beginning March 31, 1986 through May 15, 1986.

2. That the St. Louis-Southwestern Railway Company be required to pay Carmen S. J. Lozano and R. G. Lozano for all vacation and seniority rights; pay for all time lost from March 31, 1986 through May 15, 1986 at the proper pro rate (including overtime pay); credit each day's pay to a calendar date; make whole for insurance and retirement credits; remove all record of this investigation and discipline from the personal records, and any and all other benefits they may have been deprived of during their suspension from service.

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.

As a result of charges dated March 12, 1986, Investigation held March 19, 1986, and letter dated March 31, 1986, Claimants were suspended for forty-five days for failing to properly provide blue signal protection in violation of Carrier Rule 26.

Assistant Terminal Superintendent R. W. Gelder testified that on March 7, 1986 at approximately 3:20 p.m. while conducting a series of efficiency tests, he observed Claimants driving eastward on the north side of track 101 at the Carrier's Armourdale Yard in Kansas City. Gelder testified

that from a distance 30 to 40 feet away, he observed Claimant R. G. Lozano climb on the side of the B end of a piggy back flat car to release a high stand hand brake. Claimants deny that R. G. Lozano climbed on the car to perform the brake release. According to Claimants, in releasing the brake R. G. Lozano did not get on, under or between cars. According to S. J. Lozano, "He just walked to the car grab [sic] the quick release on the hand brake and released it." According to R. G. Lozano, his action amounted to "reaching over with my right hand and tripping the lever." Gelder's responsive testimony was that "Mr. Lozano was standing clearly on the car ... I am certain I saw Ray on the car." According to Gelder, the brake was 78 inches above the tie and is not the type of hand brake that is designed to be operated from the ground. R. G. Lozano is 5'7" tall.

Blue signals were placed at the switches and those switches were properly locked and aligned. However, the controlling engine did not have a blue signal displayed. Gelder testified that he spoke to Claimants about the missing blue signal on the controlling engine and S. J. Lozano stated that he applied the blue flag protection to the track but had forgotten to apply the blue signal to the cab. S. J. Lozano further stated that the error was his and he regretted that it happened. According to S. J. Lozano, he was going to put the blue flag protection on the engine, but his attention was diverted due to a conversation with a brakeman. According to Gelder, Claimants were then instructed to apply the blue flag protection.

In pertinent part, Rule 26 states:

"[W]hen workmen are on, under or between an engine or rolling equipment coupled to an engine, a blue signal must be attached to the controlling engine at a location where it is readily visible to the engineer or employee at the controls of that engine."

With respect to the procedural argument made by the Organization, we find that the charge was sufficiently specific to apprise Claimants of the allegations against them and to allow them to prepare their defense to those allegations.

With respect to the merits, we find substantial evidence in the record to support the Carrier's determination that Claimants violated Rule 26. The conflict in the testimony between Claimants' assertions that R. G. Lozano did not climb on the car to release the brake and Gelder's testimony that he did climb on the car to perform that function does not require a sustaining award. It is well-established that in our review capacity we do not make credibility resolutions. Such resolutions are for the Investigating Officer. We can find no basis in this record to conclude that Gelder's testimony that R. G. Lozano climbed on the car to release the brake should not have been relied upon. Further, nothing in the record sufficiently shows that despite the clear language of the rule, that rule was nevertheless not applicable to the work performed by Claimants on March 7, 1986. Since it is undisputed that blue flag protection was not placed on the engine and since the rule requires such protection, the Carrier's burden has been met.

We have carefully reviewed the record and do not find that the Hearing was conducted in an unfair manner. The Organization specifically points to a ruling by the Investigating Officer precluding the testimony of D.M. Crider concerning the substance of a conversation between Crider and a Safety Officer on March 19, 1986 (several days after the incident) wherein the Safety Officer allegedly stated that blue flag protection is not necessary for the release of hand brakes. We find that the Investigating Officer's ruling was not prejudicial since such testimony, if given, would not have changed the result. Assuming that Crider would have been allowed to testify, that testimony would not have negated S. J. Lozano's testimony that he was going to place blue flag protection on the engine and admittedly erred by not doing so to his distraction by another employee at the time and that he regretted the error and the further admission by R. G. Lozano that he was aware of the requirements of Rule 26 on the day of the incident. Thus, both Claimants knew of the blue flag requirements for the work they were performing and did not observe that safety requirement. The Safety Officer's alleged comment which the Organization construes as a different interpretation from that of the clear language of the rule cannot change that clear language or the fact that Claimants were aware of the blue signal requirement.

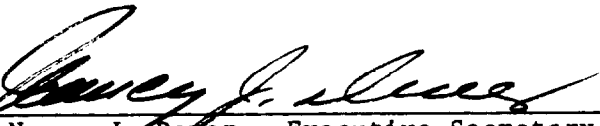
We find no basis to conclude that the discipline was excessive. The safety rule is extremely important and is designed for Claimants' protection. It was both Claimants' responsibility to see that proper blue flag protection was given. They admittedly did not do so.

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 7th day of September 1988.