

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11762
Docket No. 11586
89-2-88-2-101

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

1. That as a result of an investigation held on June 3, 1987, Carmen W. Rosinski and G. Barnes were suspended from the service of The Belt Railway Company of Chicago for two (2) days, June 15 and June 16, 1987. Said suspension is arbitrary, capricious, unfair, 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 two (2) day suspension from the Carmen's records, and that they be compensated for time loss suffered, if any.

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.

An investigation was held on June 3, 1987, to determine Claimants' responsibility, if any, for their reported failure to detect journal wedges missing and/or out of place on UTLX 78572 in the Norfolk and Western CB12 train on May 25, 1987. Said failure was alleged to have occurred during Claimants' inspection of UTLX 78572 on Track 27 in the East Departure Yard. Based upon the investigative record, Carrier concluded that Claimants failed to detect a missing journal wedge on the L-3 wheel of the aforesaid car and an out of place journal wedge on the same car's L-4 wheel. For such failure, they were both suspended two (2) days.

In defense of their petition, Claimants asserted that they thoroughly inspected UTLX 78572 and found no journal wedge missing or out of place. They pointed out that rough handling of cars was commonplace among crews employed by Carrier and foreign railroads and indeed rough handling causes journal wedges to become dislodged and out of place. They also opined that it was possible that someone was trying to steal the brass journal wedges after they made their inspection.

In response, Carrier argued that they were patently negligent and such negligence could have resulted in a very serious and costly accident. It observed, in particular, that the overheated journal bearing or hot box is one of the most hazardous aspects of railroad operations. It noted that journal defects are quite easily identifiable and accordingly the instant problem should have been readily spotted. Moreover, it contended that had Claimants fully inspected this car, they would have readily noticed that the journal wedge on the L-3 wheel was missing. It reasoned that their carelessness permitted UTLX 78572 to depart the Carrier's property for Calumet Yard in an unsafe condition.

In considering this case, we agree with Carrier that Claimants' defense rests upon assumptions and possibilities. On the other hand, there is also the possibility that the problems on UTLX 78572 could have occurred when the car departed Carrier's property. Again, this is supposition. In balancing the parties' respective positions, namely that Claimants did conduct a thorough inspection of said car and found no journal wedge missing or out of place, against Carrier's counter argument that such conditions were readily ascertainable, we find Carrier's basic position more plausible. However, because our judgment is predicated strongly upon qualitative distinctions, we believe that a Letter of Warning is a more appropriate form of discipline under these circumstances. Accordingly, the two (2) days suspension is reduced to the aforesaid modification and Claimants are to be made whole for the time suspended.

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 13th day of September 1989.