

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

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

STATEMENT OF CLAIM:

1. That as a result of an investigation held on June 2, 1987, Carmen B. Clement, J. Feipel and J. Orta were each assessed a reprimand which was placed on their personal file. Said discipline is arbitrary, capricious, unfair, unjust, unreasonable, petty, frivolous, contemptible, and in violation of Rule 20 of the current working Agreement.

2. That the Belt Railway Company of Chicago be ordered to remove the reprimand from each Carmen's personal file. Also, that Carman Clement be compensated for his loss of eight (8) hours' pay as a result of being ordered to attend the investigation, and that Carmen Feipel and Orta be compensated for a call, which is five (5) hours' pay, for being ordered to attend the investigation.

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 2, 1987, to determine whether Claimants improperly condemned BN 401309 on February 27, 1987, on Carrier's B Repair Track. It was Claimants' belief that said car had a thin flange on the R-4 wheel and, accordingly, it was set out for repairs. Based on the investigative record, Carrier concluded that Claimants committed an egregious technical error when setting out BN 401309 and they were each assessed a disciplinary reprimand.

In defense of their position, Claimants asserted that Carrier committed a fatally defective procedural error when Carrier revised the original Notice of Investigation. In the initial Notice of Investigation, Claimants pointed out that Carrier indicated that BN 401309 was within condemnable limits and thus it was properly set aside for repairs. Furthermore, Claimants argued that the gauges used to inspect the car for thin flanges on February 27, 1987, were defective and subsequently removed on March 19, 1987, by supervisory personnel. In effect, they maintained that the condition of the gauges was the sole primary reason for the incorrect readings.

Contrariwise, Carrier contended that the Notice of Investigation was procedurally proper, since the evident typographical error in the initial investigation notice was promptly corrected to read that BN 401309 was not within condemnable limits. It further disputed Claimants assertion that the gauges were removed on March 19, 1987, since the Car Foreman responsible for inventory and replacement testified at the Investigation that he was never notified to replace those gauges. This testimony was also affirmed by the Lead Car Foreman who testified that he was never notified of the alleged five missing gauges. It was Carrier's position, that Claimants improperly adjudged BN 401309 condemnable and thus its removal and detailed inspection, including removal of the wheel unnecessarily delayed Carrier's operations.

In considering this dispute, the Board finds no evidence that the Notice of Investigation was defective or detrimental to the interests of Claimants. While the initial issuance, to be sure, had a typographical error, the mistake was subsequently corrected to reflect the true focus of the Investigation and Claimants were thereby fully aware of the nature of the inquiry. Their testimony and substantive arguments clearly show a thoughtful defense.

Correlatively, we have examined the parties' respective arguments vis-a-vis the condition of the gauges and the contested pivotal issue of their removal and replacement circa March 19, 1987. As such, we must concur with Carrier that no concrete verifiable proof has been adduced conclusively showing that they were mysteriously removed because of their defective condition. This finding does not mean that Claimants' version of their condition and whereabouts is incorrect, it only means that they have not established beyond all peradventure of a doubt that the gauges were removed.

On the other hand, it might well be that the gauges used to inspect BN 401309 on February 27, 1987, did, in fact, indicate that the car had a thin flange on the R-4 wheel and thus it was not unreasonable to find the car within the condemnable limits. There are no indications that Claimants failed to follow prescribed inspection procedures and no indication that they were palpably careless in their inspection. A presumption exists that the personal gauges used by Carriers' supervisors gave a more accurate reading of the condition of the R-4 wheel, but this could be as a result of the finer measurement sensitivity of the supervisors' gauges. The original gauges were not tested by Carrier immediately after the car was set aside, and thus there is no way of knowing whether said gauges were defective. Furthermore, we have no evidence as to what exactly happened to the five gauges. For these reasons, we are impelled to give Claimants the benefit of the doubt and the instant Claim is sustained.

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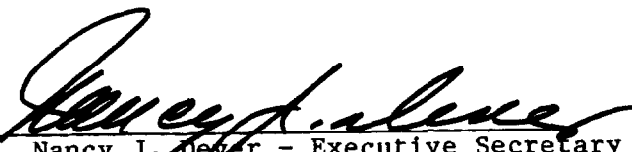
Award No. 11765
Docket No. 11585
89-2-88-2-100

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1989.