

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 30, 1987, Carmen R. Mutzbauer and M. Gulczynski were suspended from the service of The Belt Railway Company of Chicago for a period of fifteen (15) days, from July 8, 1987 through July 22, 1987. Said suspension is arbitrary, capricious, unfair, unjust, unreasonable, contemptible, and in violation of Rule 24 for the current working Agreement.

2. That The Belt Railway Company of Chicago be ordered to remove the fifteen (15) day suspensions from the Carmen's records and to compensate them for all time loss as a result of the erroneous suspensions.

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 basic facts of this case are set forth as follows: On June 25, 1987 at approximately 4:05 A.M. an overspeed impact collision occurred on Track No. 53 in the Carrier's East Classification Yard. A five-car cut of grain-filled hopper cars struck car 130294, which telescoped into and punctured tank car ACFX 11781. Damage to both cars amounted to about \$50,000. As a result of said collision and following Carrier's on site inspection of the cars, Carrier scheduled an Investigation on June 30, 1987. Based upon the extensive investigative record compiled at the Hearing, Carrier concluded that Claimants were responsible for the incident and, accordingly, assessed each employee a fifteen (15) days suspension. This disposition was appealed in accordance with the applicable provisions of the controlling Agreement.

In defense of Claimants' petition, the Organization argued that Carrier committed a serious procedural error when Carrier failed to apprise Claimants of the precise charge to be investigated. It contended this was a significant defect that violated Article 20.

As to the merits of the dispute, the Organization observed that Claimants were not on the property when the accident occurred. Furthermore, it asserted that the "black stuff" the Lead Car Foreman found on the wheels of the hopper cars was normal and not considered a foreign substance that could cause a problem when trying to retard the movement of a freight car. It argued that if responsibility is to be properly assigned, then it has to be placed with the persons responsible for the movement of the cars. In other words, it maintained that the Hump Yardmaster should have promptly stopped the Humping operations, when the first five car cut went through the retarders too fast. Instead, it pointed out that when the Hump Yardmaster allowed a second cut of cars to be put over the hump, these cars got away from the car retarders and caused the accident.

In rebuttal, Carrier argued that the Notice of Investigation was clear, since it spelled out the location date and nature of the conduct under inquiry. Moreover, it observed that Claimants' testimony at the Investigation indicated they were quite familiar with the investigative charges. It pointed out that a charge need not contain a reference to a particular rule to be proper and cited several Third Division Awards as precedent authority (See Third Division Awards 20285, 17154 and 12898).

As to the dispute's merits, Carrier asserted that Claimants simply failed to detect a clearly visible foreign substance on the wheels of 18 cars and this finding was evident by the testimony of the Lead Car Foreman. In effect, it contended that the Organization conveniently ignored the full testimony of the Lead Car Foreman, who pointedly stated at the Investigation that the substance he touched on the 18 cars was a very fine powder "similar to graphite." It also noted there was doubt as to whether Claimants inspected all of the cars, since one of the Claimants testified that he remembered inspecting "most" of them. In response to the Organization's contention that the powder transferred to the retarders, Carrier maintained there was no way of knowing if the powder would transfer from the wheels to the retarders. Even assuming it did, Carrier averred that subsequent cars could have wiped the retarders clean.

In considering this case, the Board concurs with Carrier's position. Basically what is at issue herein, is whether or not the five-car cut of hopper cars could have been stopped while moving through the car retarders, and if not, what caused said cars to move through at an increased speed. From the record, it is evident that the first five hopper cars of feed moved through the retarders at an accelerated speed and then the second five-car cut moved through at a similar non-normative rate of speed. The latter cut of cars was directly involved in the collision.

To be sure the personnel involved in overseeing the car movements should have stopped the hump operations after the first five cars ran wild, but a prior determination must be made as to what caused the cars to accelerate in the first place. In the absence of any mechanical failure or other explanatory error, such as a clear finding that the retarders were not set on their maximum retarding capacity or that the retarders were not in good operating condition, we must conclude that the condition of the wheels was most likely responsible for the increased acceleration. There is no persuasive rebuttal evidence that the remnants found on the body, back and outside face of the wheels was not a slippery powdery substance and thus a plausible nexus exists between the condition of the wheels and the enhanced speed of the hopper cars. There is even an added presumption that the cars were not fully inspected as evidenced by the testimony of one of the Claimants who testified at the Investigation that "most" (not all) of the cars on Track 14 were inspected for foreign substances. Accordingly, and for the reasons aforesaid, we find sufficient credible evidence to sustain Carrier's finding of responsibility. Furthermore, as to the procedural issue raised, namely, the ambiguity of the Notice of Investigation, we find no evidence nor indications that Claimants were unmindful of the nature or focus of the inquiry. Their testimony was indeed complete and competent and relevant to the full dimensions of the Investigation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

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