

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11941
Docket No. 11696
90-2-89-2-6

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

1. That as a result of an investigation held on December 10, 1987, Carmen M. Gulczynski and W. Kelly were assessed a record reprimand. Said reprimands are unfair, unjust, unreasonable, arbitrary, capricious, an abuse of managerial discretion, and in violation of Rule 20 of the current working Agreement.

2. That the Belt Railway Company of Chicago be ordered to remove the record reprimands from the Carmen's personal files and to compensate them for all time lost due to attending 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.

Claimants were employed by the Carrier as Carmen at Chicago, Illinois.

On November 18, 1987, the Carrier notified the Claimants to appear for a formal Investigation in connection with the following charges:

". . . to develop the facts and determine your responsibility, if any, for your reported failure to bad order BN 618417 for R2 thin flange during your inspection of BN train on Track No. 11 in the West Receiving Yard at approximately 5:35 p.m., November 11, 1987. This resulted in a delay to BN 618417 as car was set out of GTW train on November 13, 1987."

After two postponements, the Hearing took place on December 10, 1987. On December 18, 1987, the Carrier notified the Claimants that they had been found guilty of the charges and were assessed discipline of a reprimand. Thereafter, the Organization filed a Claim on Claimants' behalf, challenging their discipline.

This Board has reviewed the evidence and testimony, and we find that the Carrier has not met its burden of proof that the Claimants were in violation of any Carrier Rules. The Carrier has indicated that the Claimants failed to "be alert and devote themselves exclusively to the Carrier's service" and that "employees must not be indifferent to duty" in violation of Rules H and J. However, a thorough review of the transcript does not reveal that the Claimants were in violation of any Rule. It is true that there was a car that had a serious problem and that the Claimants had been assigned to inspect it. However, the Carrier has not proven, with sufficient evidence, that the Claimants were in violation of any Carrier Rules nor has the Carrier proven which, if any of the two Claimants was responsible for the poor inspection. Therefore, the Claim must be sustained.

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 28th day of November 1990.