

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12586
Docket No. 12471
93-2-91-2-277

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That the Missouri Pacific Railroad Company is violative of Rule 32 of the June 1, 1960 controlling agreement and has unjustly dealt with and damaged Electrician R. L. Schilb at North Little Rock, Arkansas when they did not afford him a fair and impartial investigation, resulting in the unjust and improper discipline of fifteen (15) days deferred suspension by letter dated September 21, 1990.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to completely clear Electrician R. L. Schilb's record of the discipline of fifteen (15) days deferred suspension assessed him on September 21, 1990, any reference to this discipline matter be removed from his personal record file, and he be removed from Step 3 of the Progressive Counseling and Discipline Procedures."

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 employe 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.

On May 19, 1990, the Claimant was an Electrician at the Carrier's diesel facilities in North Little Rock, Arkansas, when he and another electrician were called to Ensign, Arkansas, to make repairs to train NLPL-19. In testing the locomotive of the lead unit UP 1974, the Claimant isolated it from the rest of the train by closing the angle cock (i.e., closing the air supply to the train brakes) at the rear of this unit. He subsequently informed the train crew that repairs were made on UP 1974 and that the crew could continue on its way. The train subsequently underwent a runaway when the crew got under way and when initial efforts to stop it by normal brake application and by putting the engine in reverse failed, the crew made ready to jump. At this point, a crew member noticed that the angle cock on the lead unit was closed and reached down to realign (open) it, which resulted in emergency brake application to the train and finally brought it to a stop. On May 25, 1990, the Claimant was served with a Notice of Investigation to develop the facts which led to the runaway train. Specifically, the Claimant was charged with not cutting in (opening) the train line angle cock after working on UP 1974, the lead unit of NLPL-19 at Ensign, which resulted in the train's being without brakes (in effect, a runaway train) and which endangered the lives of the crew on the NLPL-19 as well as those of the crew on an approaching HOCH train.

Following the hearing of August 1, 1990, the Claimant was assessed with 15 days of deferred suspension for his violation of General Rules B and 607 of Form 7908 (Safety, Radio and General rules for All Employees). When the Organization's appeal of the suspension was referred up to and including the highest designated officer without settlement, the matter was appealed to the Board for final adjudication.

The issues in this instant appeal are two: 1) Did the Claimant receive a fair and impartial investigation? and 2) Was the discipline assessed Claimant just and proper?

The Organization claims that the Claimant was not given a fair and impartial hearing because he was not given a definite and precise charge in that the Carrier did not cite a rule violation in its Notice of Investigation but only developed the specific charge of violation of rules at the hearing. The Organization further declared that the hearing was not impartial and unbiased because "the Carrier committed the fundamental error and fatal defect in the conducting of the investigation by not summoning material witnesses and producing records that were available only to and under the Carrier's control." Finally, the Organization claims

that the hearing officer's also serving as the disciplinary officer in this matter contributed to an unfair and partial hearing of the Claimant. It asserts that the discipline assessed was unwarranted because the Carrier failed to sustain the burden of proof.

The Carrier countered the allegation of the Organization about the lack of specificity in the Carrier's Notice of Investigation by pointing out (in its January 11, 1991, response to the Organization on the property) that it is not necessary to quote the rules in the charges and that, in fact, the Carrier further states that the Organization has failed in its burden of proof to provide any evidence to support its contention that the Carrier violated Rule 32 of the Agreement. The Carrier maintains that the Claimant was afforded a fair and impartial hearing in accordance with Rule 32 of the Agreement and that the Carrier adduced substantial evidence to conclusively prove the Claimant's guilt in the charges and that the discipline imposed was commensurate with the seriousness of the violation.

The Board has reviewed the entire record, including the transcript of the hearing and rejects the Organization's contention that the Claimant did not receive a fair and impartial hearing. The charges are sufficiently specific and precise to enable the Claimant, with or without representation, to defend himself. Claimant was accused of failing to open the train line angle cock after working on UP 1974, the lead unit of NLPL-19 at Ensign, which resulted in the train's being without brakes and becoming a runaway train, thus endangering the lives of its crew as well as those of the crew on an approaching train. Nor does the Organization support with evidence its contention that the hearing was not impartial and unbiased. Its claim that the hearing was unfair and partial because the hearing officer also served as the disciplinary officer is tantamount to saying that a judge cannot both conduct a hearing and pass sentence.

The Board also finds that the Carrier met its burden of proof in this case. It is undisputed that the crew on the runaway train discovered that the line angle cock was closed and that they were able to bring the train under control after opening it. The Organization's allegation that only a biased train crew's testimony substantiates that the angle cock on UP 1974 was left in the cut out (closed) position by the Claimant is refuted by the Claimant's own testimony and that of the Manager of Operating Practices, who talked with the Claimant the day after the incident. The Claimant admitted that he had closed the line angle cock, but could not recall whether or not he had opened it after completing the work he performed. Absent any evidence that someone had seen the Claimant open the line angle cock (even though the Claimant was unable to recall opening it), the only reasonable inference to be drawn is

that the Claimant did, indeed, fail to open the line angle cock. Given the seriousness of the oversight, resulting as it did in a runaway train, the Board concludes that the discipline assessed against the Claimant was just and proper. The Board accordingly affirms the disciplinary action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.