

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12748
Docket No. 12737
94-2-93-2-95

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM: "Claim of the Employees:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation which was neither fair nor impartial, the Carrier unjustly and improperly dismissed from service K. H. Jones (hereinafter referred to as the "Claimant").
2. That accordingly, the Carrier be ordered to
 - (a) Restore Claimant to service with all seniority and vacation rights unimpaired.
 - (b) Compensate Claimant for all time lost from service commencing March 27, 1992.
 - (c) Make Claimant whole for all health and welfare and insurance benefits lost while dismissed from service.
 - (d) Expunge from Claimant's personal record any and all references to the investigation proceedings and the discipline subsequently imposed."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

At the time this dispute arose, Claimant was working as a Mechanic-in-Charge in Carrier's Proviso Classification Yards located in Northlake, Illinois, on the 5:00 P.M. to 1:00 A.M. shift. Among Claimant's duties was repair of locomotive power assigned to road service which did not require actual time in the Proviso Diesel Shop. On March 12, 1992, Claimant was directed to service locomotives 6852 and 6856 scheduled to depart for Janesville, Wisconsin, on train #PRJAA as soon as the servicing was complete.

On March 13, 1992, Claimant was charged as follows:

"Your responsibility for your failure to properly perform your duties on March 12, 1992, at approximately 12:30 A.M. when you were working without proper Blue Flag protection."

Hearing was held on March 26, 1992. The following day Carrier notified Claimant that he was "disqualified as a Mechanic-in-Charge and dismissed effective March 27, 1992." The Union appealed the discipline on behalf of Claimant by letter of May 24, 1992. That appeal was declined, and the appeal was subsequently progressed up to and including the highest Carrier officer responsible for handling such grievances. Following conference on the property on January 12, 1993, the matter remained unresolved.

The Union initially raise a procedural objection concerning the adequacy of the Investigative Hearing afforded Claimant. Specifically, the Union maintain that the wording of the charge contained in the initial Notice of Investigation indicates that Carrier had already decided Claimant's guilt before the investigation. While the wording of the Notice of Investigation may appear prejudicial, there is no evidence in the Hearing transcript to support the Union's objection.

With respect to the merits of this case, it is the position of Carrier that Claimant was negligent in his servicing of the locomotives in question. Specifically, Carrier cites Safety/General Rule #26. That Rule reads, in pertinent part:

"Blue Signal: A clearly distinguishing blue flag or blue light by day and a blue light at night. The blue light may be displayed either steady or flashing. When attached to the operating controls of an engine, it need not be lighted if the inside of the cab area or the engine is sufficiently lighted so as to make the blue signal clearly distinguishable. * * *

Blue signals must be displayed by each craft or group of workmen who are to work on, under or between rolling equipment. They may be removed or the display discontinued only by the same craft or group who placed them."

For its part, the Union points out that it is unrefuted that the truck assigned to Claimant did not contain blue flags. Moreover, Claimant maintained without contradiction that he had been told to service the locomotive quickly because the power and rolling stock were already 20-30 minutes late. The Union points out that Rule 26 contains a provision that contemplates just such a situation at Section 4:

"...(4) When emergency repair work is to be done on, under or between an engine or rolling equipment coupled to an engine and a blue signal is not available, the engineman or employee at the controls of the engine must be notified, and appropriate measures must be taken to protect the employees performing such work."

Testimony by Carrier's officers indicates that the engineer in the lead locomotive in question directed them exactly to Claimant's whereabouts on the trailing locomotive. Accordingly, Claimant had obviously complied with the provisions of Rule 26, Section 4. In view of the fact that Claimant was given late notice to service the locomotives in question and given a truck with no blue flags in it, Claimant legitimately followed the contingency plan described in Rule 26, Section 4. Thus, the Union maintains that he is innocent of the charge against him.

While Carrier may dispute Claimant's assessment of the situation in this case as an "emergency", it is apparent from the facts of this case that Claimant was faced with a "Hobson's choice." Upon discovering that the truck assigned to him by his Supervisor lacked the usual blue flags, he could have returned to the Shop to acquire some, thus making the already-late train even later; or, he could have followed the procedures in Rule 26, Section 4, notifying the engineer of his situation and complete his work with the alacrity expected of him. Claimant's choice of the latter path is clearly not grounds for sustaining the charge against him.

In light of the foregoing, the Board finds that Carrier did not meet its burden of persuasion in this case. Accordingly, the grievance is sustained. Claimant shall be reinstated in accordance with the provisions of Rule 35(j) of the Agreement Between the Parties and shall be made whole, including any wages lost, less any outside earnings during the period since his dismissal.

AWARD

Claim sustained in accordance with the findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.