

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13076
Docket No. 12894
96-2-94-2-37

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

(International Brotherhood of Firemen & Oilers,
(System Council No. 15, AFL-CIO

PARTIES TO DISPUTE:

(Illinois Central Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the current Agreement, Hostler Helper J. Lucas, Memphis, Tennessee, was unjustly dealt with when suspended for a period of fifteen working days, May 8 thru May 28, 1993, following a hearing held on April 23, 1993.
2. That accordingly, the Illinois Central Railroad be ordered to compensate Mr. Lucas for all time lost at the pro rata rate and the mark be removed from his record."

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.

As a result of a formal Investigation held on April 23, 1993, Claimant was notified that he was found culpable of not properly setting up Locomotive 9534 to be left unattended causing it to run into the turntable pit; he was assessed a 15 working day suspension.

A review of the record reveals that Claimant, then employed as a Hostler Helper on the 3:00 - 11:00 P.M. shift, helped to move Locomotive 9534 to Track #5 $\frac{1}{2}$, where it was left running at approximately 4:30 P.M. on April 9, 1993. The Claimant testified that he applied both the independent airbrake and handbrake, but did not block the wheels, in accordance with Carrier rules for running vehicles, and that he checked that the derail was in place and locked. Hostler Craft confirmed that Claimant told him that he had set the handbrake.

At approximately 6:00 A.M. on April 10, more than 13 hours later, Locomotive 9534 rolled down Track 5 $\frac{1}{2}$ through the derail and the front truck of the unit fell into the turntable pit. There is no dispute that the derail did not work because the ties were rotten, that a similar derail failure had occurred at this location shortly before this time, and that, had the derail been functional it would have prevented the Locomotive from falling into the turntable pit.

The Carrier's conclusion that Claimant had failed to properly set the handbrake on the Locomotive was based upon the testimony of the Foreman that when he saw the unit in the pit it appeared that the handbrake had not been applied, and that there was nothing wrong with the handbrake when it was tested after the unit was removed from the pit. Although Locomotive 9534 was left running after it had been moved onto Track 5 $\frac{1}{2}$ by the Claimant and Hostler Craft, it appears that it was no longer running when Supervisor Schrieber came on duty at 11:00 P.M. There is no evidence indicating that anyone else worked on or boarded Locomotive 9534 between 4:30 P.M. on April 9 and 6:00 A.M. on April 10 when the incident occurred.

The Carrier asserts that the handbrakes were fully operational and would have held the Locomotive in place if properly applied, and the discipline was reasonable based on the extent of damage caused and the seriousness of this type of Rule violation. The Organization argues that the Carrier failed to show that Claimant was responsible for the incident, because the tests on the handbrakes were inconclusive as they were performed after the unit was removed from the pit, the unit was accessible to anyone during the interim 13 hour period, there is no explanation as to why the Locomotive stopped running on its own, and it is unlikely that it would have taken over 13 hours for the unit to begin moving if the handbrake was not applied.

While long established precedent reveals that this Board cannot set itself up as trier of fact when confronted with conflicting testimony and may not resolve credibility disputes (Second Division Awards 7542, 8280, 8566), it also recognizes that it is the responsibility of the Carrier to adduce substantial evidence in support of any discipline imposed. (Third Division Awards 25411, 11626.) Under the circumstances of this case, we are unable to conclude that the apparent position of the handbrake while the front truck was in the pit and the subsequent test revealing that the handbrake was functional constituted substantial evidence that the Claimant failed to properly set the handbrake at 4:30 P.M. on April 9, or that his actions caused the Locomotive to run into the turntable pit on April 10. This is especially true in light of the passage of over 13 hours between Claimant's securing the Locomotive and it beginning to roll, the fact that the Locomotive was accessible to others while on Track 5 1/2 and stopped running for some unexplained reason during this period of time, and the admission that any damage caused was a direct result of the defective condition of the derail which was known to the Carrier at the time. The Board is not convinced that the Carrier met its burden of proof in this case, and, accordingly, the claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders than 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 9th day of December 1996.