

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13337

Docket No. 13076

98-2-95-2-100

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

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Incorporated**

STATEMENT OF CLAIM:

“(1) That the Grand Trunk Western Railroad Company (hereinafter referred to as the Carrier) violated the provisions of Rule 31 of the September 1, 1949 Controlling Agreement, as amended, when subsequent to an investigation held on November 9, 1993 the Carrier improperly and unjustly placed twenty (20) demerits on the personal service record of Battle Creek, Michigan employee R. W. Thunder (hereinafter referred to as the Claimant).

(2) That accordingly, the Carrier be ordered to remove the twenty demerits from claimant’s personal service 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.

This claim arises from Carrier’s issuance of 20 demerits to Claimant for violation of Safety Rule 4315 (A) and (C) on October 15, 1993 resulting in damage to two

locomotives. During the incident in question, which occurred at the Battle Creek Enginehouse on the 11:00 P.M. to 7:00 A.M. shift, Claimant was acting as Groundman and Electrician C. C. Gooch was operating the locomotive, and both were notified of the holding of an Investigation to determine their responsibility concerning the collision of the locomotive they were moving with one stationed on an adjacent track.

As established during the Investigation held on November 9, 1993, Claimant was at the front of the locomotive with a flashlight keeping watch in the direction they were moving. He and Gooch worked together regularly, but Claimant had rarely acted as Groundman. At the time of the incident, it was raining and visibility was poor. Claimant and Gooch were in radio contact, and Gooch was on the blind side of the locomotive while operating it. Gooch testified that it is normal for an Operator to continue moving the locomotive until he is told to stop when the communication is by radio between himself and his Groundman. Gooch further testified that he immediately applied the brakes when Claimant told him to stop, a command which Claimant repeated twice in the same sentence. Claimant testified that he was watching ahead and ordered Gooch to stop as soon as he had any doubt that they would be able to pass safely. Despite these facts, the locomotive collided with another it was passing on the next track. The matter was reported to Foreman R. T. Gunn by both Claimant and Gooch. On the basis of the record, Carrier found Claimant guilty and exonerated Gooch.

Carrier argues that Claimant received a fair Hearing and was proven guilty, because the evidence establishes that Gooch stopped immediately upon being told, leading to the conclusion that Claimant did not tell him to stop with sufficient time. Carrier contends that the conditions he was working under were normal for that area, and that Claimant had worked there for a few years. Carrier asserts that the penalty imposed was appropriate, because Claimant's past record establishes that he had received 20 demerits for the same infraction two years previous, and another 20 demerits for a related Rule infraction.

The Organization contends that the record contains no evidence that Claimant did anything wrong, because it establishes that he was looking ahead and did give the stop command twice. It notes that Carrier failed to sustain its burden of proving Claimant's guilt by substantial evidence, and questions its conclusion that no responsibility be placed with Gooch for the incident.

The record establishes that only Claimant and Gooch were witnesses to what occurred at the time of the collision. There is no dispute that weather and visibility conditions were poor. Gooch's assertion that he stopped immediately upon receiving the

command was not questioned or contradicted by Claimant. What remains for the Board is the determination of the reasonableness of Carrier's conclusion that the collision would not have occurred but for Claimant's delay in issuing the stop order and whether substantial evidence in the record supports such a finding.

The Organization does not assert that the collision occurred because of the rain or poor lighting, but rather, that those conditions added to Claimant's inability to see the potential hazard at an earlier time, and that he reacted properly when he realized the danger. However, Carrier's discipline is premised upon the fact that Claimant did not react quickly enough, not that he did not act appropriately belatedly.

Based upon a review of the record, and considering the fact that Carrier is obliged to rely upon what actually occurred in incidents of this type where no other eyewitnesses are present, the Board concludes that there is sufficient evidence in the record to support Carrier's conclusion that Claimant violated Rule 4315 as alleged. We find no basis to substitute our judgment concerning the appropriate level of penalty for Carrier's, especially in light of Claimant's prior record in this area. Accordingly, the claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of November 1998.