

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13703
Docket No. 13604
03-2-00-2-78

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

PARTIES TO DISPUTE: (National Conference of Firemen & Oilers
(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

- “1 .Under the current controlling Agreement, Mr. Richard Schmitz, Laborer/Hostler, Laurel, Montana, was unjustly dealt with when suspended for a period of ten (10) days (October 22, 2000 through November 2, 2000), following a hearing held on September 22, 2000.
2. That accordingly, the Montana Rail Link, Inc. be ordered to compensate Mr. Schmitz 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.

On September 14, 2000, the Claimant and fellow laborer/hostler Chavez were assigned the duty of preparing and moving locomotives in Carrier's Laurel, Montana, roundhouse. At approximately 6:20 A.M., Messrs. Schmitz and Chavez were in the process of uncoupling and moving one locomotive from a stationary consist of three units. Chavez was in the cab of unit No. 7073 and the Claimant was on the ground charged with the responsibility of uncoupling the connections between No. 7073, and the remaining two locomotives. After the Claimant pulled the pin separating the coupler on unit No. 7073, he directed Chavez to “pull ahead.” However, the Claimant had failed to disconnect the MU cables and hoses and safety chains between unit No. 7073 and the next unit, No. 6354, causing damage to both locomotives.

By letter dated September 15, 2000, the Claimant was instructed to attend a fact finding hearing to determine his responsibility in connection with the damage to units 7073 and 6354. Following the September 22 Investigation, the Carrier found the Claimant guilty of violating MLR Mechanical Department Operating Rules 1.1, 1.1.1, 7.1 and 7.4, and suspended Schmitz from service for ten working days.

The Organization protested the discipline, maintaining that when the incident occurred it was still dark out, and the Claimant, who could not see well in the dark, "assumed" that the locomotives were "completely cut." The Claimant, who testified that he could not see the air hoses located on the other side of the locomotive, based his assumption on the fact that there were "no air brakes on the 6354."

The General Chairman further maintained that Chavez shared in the responsibility of making a safe move with the locomotives, and that the Claimant should not have been the only one held accountable. According to the General Chairman: "The Claimant explained more than once to Mr. Chavez what they were going to do and Mr. Chavez agreed, but after the accident, Mr. Chavez still didn't understand what they were doing."

For his part, the Claimant stated that he complied with Carrier Rules to the "best of his ability and knowledge," and that he had "separated locomotives many times before and nothing like this had ever happened."

The Carrier denied the claim alleging that "substantial" record evidence supported its determination that the Claimant violated each of the rules for which he was cited. Specifically, the Carrier maintained that the Claimant, as "the man on the ground" was solely responsible to ensure that the locomotive units were properly disconnected and ready for movement and that the Claimant had simply failed to take the proper precautions to accomplish same. According to the Carrier, the Claimant was "derelict" in performing his duties safely on the morning of September 14, 2000, and should be accountable for his actions.

A review of the record evidence supports the Carrier's determination that the Claimant violated MLR Mechanical Department Rules as charged when he failed to properly uncouple and disconnect the locomotive units prior to directing Chavez to move unit No. 7073. The Claimant testified that he "took it for granted" that the MU cables and hoses and safety chains were disconnected between the units relying upon his observation that there was no air in the brake cylinders on unit No. 7073, and that he "believed" that Chavez had already disconnected same. However, the record demonstrates that the Claimant and Chavez did not engage in any discussion about who would perform specific duties. Moreover, there is no dispute that the Claimant was the "man on the ground," and therefore responsible for ensuring that the locomotive units were properly disconnected and ready for movement.

Turning to the question of discipline, the Organization contended that the Carrier's imposition of a 10 day suspension was an "unjust, arbitrary and capricious action." However, we do not concur. In the Claimant's three years of service, he has been formally disciplined on four separate occasions and each of those prior incidents involved the Claimant's noncompliance with general safety and/or operating Rules. The Claimant violated each of the Rules for which he was cited, and in the circumstances, the Carrier's imposition of a 10 day suspension cannot be considered unjust, arbitrary or capricious.

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 31st day of January, 2003.