

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13705
Docket No. 13613
03-2-01-2-15**

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
(Canadian National/Illinois Central Railroad)

STATEMENT OF CLAIM:

- "1. Under the controlling Agreement Ms. G. Woods, Hostler and Mr. D. Stitts, Hostler Helper, Memphis, Tennessee, was (sic) unjustly dealt with when assessed a fifteen (15) day deferred suspension, following a hearing held on February 13, 2001.**
- 2. That accordingly, Canadian National/Illinois Central Railroad be ordered to remove any reference of a fifteen day deferred suspension from Ms. Woods and Mr. Stitts personal file. In the event that the deferred suspension is invoked under the probationary period of one year; than the Claim will be also for payment of all time lost at the pro rata rate."**

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 January 23, 2001, Claimant Woods was assigned to the duty of moving locomotives, with the assistance of Claimant Stitts. At some point in the process of moving the locomotives, Claimant Woods ran over a derail and a blue flag.

An Investigation was held on February 13, 2001 with regard to the incident, after which Carrier notified Ms. Woods and Mr. Stitts that:

"It was developed at the investigation that you in fact share the responsibility for failing to stop short of the derail and blue flag and failed to remove the

derail and blue flag allowing the hostler to run over them, violating the Operating Rules, Safety Rules, Blue Signal Protection Policy as Posted and Mechanical/Material Department Employees-General Regulations.

For failure to perform your duties properly, you are hereby suspended for fifteen (15) days. However, your discipline is deferred for a period of one year from the date of this letter.

During the deferred period any violation of company and/or safety rules will be cause for your discipline to begin and there will be an investigation for the rule violation."

In early April 2002, the Organization protested the discipline maintaining at the outset that Claimants were "victims of racial profiling and/or discrimination." In that connection, the General Chairman noted that an "identical" incident had occurred a year prior and the two "white employees" were not disciplined as a result.

With regard to Claimants' culpability, the General Chairman asserted that they had been notified by Foreman Morgan that it was "okay" to move the locomotives, and Claimants had therefore assumed that: "The workmen were done and therefore the blue flag and derail would be down." The General Chairman further argued that Claimant Woods' visibility was restricted due to the "high nose on the 2454", and that Claimant Stitts maintained that he had "looked" but did not see the derail or the blue flag. Finally, the General Chairman maintained that: "the workman who put up the blue flag is the only one that can remove it," and when that individual failed to do so, he "created an unknown safety hazard for the Claimants."

In its May 21, 2001 denial, Carrier noted the following:

"First and foremost, the organization does not have the jurisdiction nor the qualifications to determine whether or not the claimants are victims of 'racial profiling and/or discrimination. Neither of these allegations is true and the organization's analysis based on one incident in which the foreman acknowledged that he did not properly do his job, is without foundation and totally flawed."

With respect to the merits of the issue, Carrier noted that both Claimants had been properly trained and received their Mechanical Engineers Certificate and were responsible for running over the derail and blue flag. In that connection, Carrier noted that Claimants had performed the same procedures on many occasions without incident and asserted that the January 23 incident was due to the Claimants' "negligence."

Claimants were disciplined for running over and damaging a derail and a blue flag, and in these circumstances, the record evidence supports the charge. During the Investigation, the Organization questioned whether or not Ms. Woods and Mr. Stitts had the proper training and experience to complete the task assigned to them on January 23,

2001. However, it is not disputed that both Claimants received their Mechanical Engineers Certification, and had performed this, or similar procedures, "many times." Specifically, Claimant Woods stated the following:

"Q. To receive this certification, did you go through some training?

A. Class for my license?

Q. Yes.

A. Yes.

* * *

Q. Ms. Woods, did you run over a blue flag and derail at the east end of track number three?

A. Yes."

For his part, Mr. Stitts admitted that:

"Q. Did you know that the blue flag and derail was in the derailing position?

A. No, I did not see it.

* * *

Q. I said is it part of your job to see if the blue flag and derail was off?

A. Yes, it's part of my job, yes."

The record evidence supports Carrier's determination that, on January 23, 2001, Claimant Woods and Claimant Stitts were solely responsible for running over and damaging the derail and the blue flag on the east end of outbound track three. In the circumstances, Carrier's imposition of a fifteen (15) day deferred suspension cannot be deemed excessively harsh or otherwise inappropriate. Therefore, this claim is 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 31st day of January, 2003.