

The Second Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway Company)

STATEMENT OF CLAIM:

1. That Fireman & Oiler, Mr. D. L. Spann was unjustly suspended from the service of the Burlington Northern Railroad for a period of five (5) working days, from October 9, 1989, through October 13, 1989, on charges of alleged violation of Rules 181, 563, and 564, of the Burlington Northern Railroad Safety Rules and General Rules, Form 15001, 8/81.

2. That accordingly, the Burlington Northern Railroad do the following with Mr. D. L. Spann:

- (a) Compensation for all time lost,
- (b) Clear his personal record of all matter relating to the alleged incident.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant, a Diesel Laborer at Carrier's Memphis Diesel Shop, was charged with performing his duties in a dilatory and indifferent manner for allegedly placing blue safety flag markers on engine consists on August 10, 1989 in order to intentionally cause delays. After a Hearing on September 12, 1989 Claimant was found guilty as charged and assessed the penalty of a 5-day suspension.

While both parties raised numerous procedural objections, this claim can best be decided by proceeding directly to the merits.

It is clear from the evidence presented at the Hearing that Claimant intentionally caused delays in releasing engine consists for service in order to call attention to what he felt was a shortage of laborers at the Diesel Shop. While Claimant may or may not have had a legitimate complaint, he cannot be allowed to take matters into his own hands in this fashion when there are established procedures for pursuing grievances. The basic operative rule for employees in the railroad industry has always been "comply now, and grieve later," and there is nothing in the record of this case which would justify an exception to that rule.

The Board finds that there was substantive evidence that Claimant was guilty as charged, that he received a fair and impartial Hearing, and that the discipline assessed was commensurate with the nature of the offense. We therefore find no reason to disturb the Carrier's disposition of this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1992.