

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 3188
Docket No. 3200

Referee Irwin M. Lieberman

PARTIES The American Railway Supervisors Association
TO

DISPUTE: The Chesapeake and Ohio Railway Company

STATEMENT It is the Claim and request of the Petitioning Organization that:
OF CLAIM:

1. Respondent Carrier violated Rule 16 of the Agreement when on November 14, 1973, Carrier assessed a discipline of ten (10) days overhead suspension against Mr. C. R. Clark.
2. Carrier shall be required to rescind the discipline of ten (10) days overhead suspension and clear the record of Mr. C. R. Clark.

OPINION Claimant was employed as a Round House Foreman at Carrier's Parsons
OF BOARD: Ohio locomotive facility, with assigned hours of 2:30 P.M. to 11:30 P.M. His responsibilities included supervision of hostlers in servicing diesel locomotive units preparatory to operations. On October 24, 1973, at about 9:00 P.M., the Dispatcher notified Claimant that Unit 7524, which had been called for 7:45 P.M., was having trouble at Whittier Street. At the same time the Dispatcher notified Claimant that Unit 5836-5840-7513 West was called for 11:45 P.M. The three units in question were at the Mosel Yard at that time. Claimant was unable to reach the hostlers by telephone and told both his clerk and the Mosel Yardmaster to inform the Hostlers to put the three units together and get them ready to go west at 11:45 P.M. Shortly thereafter, Claimant took an electrician and went to Whittier Street to work on Unit 7524 and did not return to the Roundhouse until about 12:15 A.M. The Extra West train encountered a delay of three and three quarters hours when Unit 5836 ran out of fuel 14 miles from Parsons. Subsequently Claimant was charged with failure to see that Unit 5836 was properly serviced, resulting in a serious delay, and after an investigation, was found guilty of the charge and disciplined.

Carrier asserts that Claimant was negligent in carrying out his duties as a Round House Foreman by his failure to make definite arrangements to have the hostlers under his supervision properly service Unit 5836. It is alleged that Claimant failed both to properly instruct his subordinates and to follow up on his instructions to be sure that they were properly followed. It is also claimed by Carrier that Claimant exercised poor judgment when he elected to go to Whittier Street and left the Round House area unsupervised.

The investigation in this dispute was at best perfunctory in that the only testimony was that of Claimant. There is no information as to the actions of the Clerk or Yardmaster and no testimony from any of the Hostlers involved in the actual servicing of the unit. Carrier cites a number of Awards which hold that supervisors must use due care in the performance of their duties or be subject to discipline. We note, however, that a supervisor does not guarantee the proper performance of his subordinates' duties and should not be disciplined for their misdeeds unless there is evidence that he himself has been at fault (Awards 2686 and 3017).

Petitioner contends that Carrier violated Rule 16(a) of the Agreement, which deals with Investigation and Discipline. We find no basis in the record to support this contention. The Organization also contends that Carrier was inconsistent in that Carrier has taken the position in other disputes that dispatching locomotives could be accomplished by other employes when no Round House Foreman was present, as distinct from Carrier's position in the instant dispute. We shall not deal with that contention since the principle issue before us is whether or not Claimant, based on the investigation, was negligent in the performance of his duties on the night in question.

The transcript of the investigation indicates that Claimant left instructions for the three units to be prepared by the Hostlers to go west at 11:45 P.M. on October 24th. The precise wording of his instructions to his Clerk and the Yardmaster are in doubt but the thrust of the direction is unquestionable. It must be assumed that direct phone conversation with the Hostlers would have produced no different result. It is also evident from the testimony that the Hostlers routinely prepare similar units for operations as part of their normal functions, without special injunctions as to fueling. It is not credible to assume that Carrier expects the Foreman to look over the shoulder of all employes working under his jurisdiction to be sure that they have accomplished their job - particularly routine jobs. It is expected that he must give them proper training and adequate instruction as to the work to be accomplished. In the dispute before us there is no evidence to show that the Hostlers did not get the usual instruction to service the units in preparation for movement. It is also noted that Claimant testified, without rebuttal, that the unit in question had not been properly fueled in Walbridge on October 22nd which would have provided sufficient fuel for the run in question on October 24th. Although Claimant may not have exercised the best judgement in spending the time he did at Whittier Street, he used his supervisory prerogative in deciding to spend time with a disabled unit rather than at the round house in more routine activity. It is clear that the investigation in this dispute does not contain sufficient evidence to support the conclusion of guilt and therefore we must sustain the claim.

FINDINGS:

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: *Lucy J. Lewis*
Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1975.