

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Referee Ronald L. Miller

Award Number 4324  
Docket Number 4344

PARTIES Railroad Yardmasters of America

TO

DISPUTE:

Baltimore and Ohio Railroad Company

STATEMENT Claim and request of Railroad Yardmasters of America that:

CLAIM:

Yardmaster W. L. McCormick, Cincinnati, Ohio be paid four one-half hours pay for date of March 9, 1983 for attending an investigation and that discipline assessed of five (5) days overhead suspension be removed and record cleared of any notation thereof.

OPINION  
OF BOARD

Yardmaster W. L. McCormick was charged with failure to comply with special instructions issued on December 6, 1982. The charge does not include the Carrier's subsequent contention that Mr. McCormick also violated Operating Rules B, 1401 and 1406. It is not sufficient to argue that the subsequent contentions are contained within or follow from the original charge. Mr. McCormick must understand the full scope of the charge in order to prepare a defense, and that understanding should result from a simple reading of the charge. The original charge in this matter makes no mention of the Operating Rules, therefore it is not proper for the Carrier to allege misconduct pertaining to them.

The Carrier has not established that Mr. McCormick ever saw the special instruction of December 6, 1982. The Carrier has not refuted these points:

1. Mr. McCormick was working as a Oakley Yardmaster on the date the special instruction was issued.
2. The Carrier Officer who qualified Mr. McCormick as a Hump Yardmaster did not inform Mr. McCormick about the special instruction.
3. At the time of this incident, there was no filing system, posting procedure or sign sheet to assure that all Hump Yardmasters knew of current special instructions.

As its fallback position, the Carrier contends that even if Mr. McCormick did not see the special instruction, he had knowledge of its substance through the workplace practice derived from the special instruction. This contention is not supported with substantial evidence. In Q/A 101, Mr. McCormick stated that he did not take exception to Yardmaster Duckworth's statement concerning the practice of notifying the Car Foreman about contaminated wheels. The practice identified by Mr. Duckworth at Q/A 91 does not support the Carrier's contention.

"Q91 Has it been a practice that the Tower Trainmaster on every shift has always taken care of this particular duty and the Yardmaster has never done this job?

"A91 I can only speak for my tour of duty and say that at no time did I ever give the Car Supervisor or Car Foreman any instructions concerning contaminated cars because it was always done by the Asst. Terminal Trainmaster."

The Carrier has not convincingly established the existence of a controlling practice that would indicate that Mr. McCormick knew of the substance of the special instruction.

Overhead suspension in this case cannot be upheld. The Carrier has not shown that Mr. McCormick had direct or indirect knowledge of the special instruction. Mr. McCormick cannot be held responsible for that which he did not know.

**FINDINGS:**

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

The Carrier and the 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.

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

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

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

  
Nancy J. Bever  
Executive Secretary