

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union - Yardmasters Department
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim and request that Yardmaster P. D. Ferro's record be cleared of the 5 days deferred suspension that was assessed as the result of hearing held November 1, 1988."

FINDINGS:

The Fourth 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.

After postponement a Hearing was held on November 1, 1988, wherein Claimant was alleged to have failed to give proper notification of track conditions, including the existence of a hazardous material car. The Carrier thereafter determined Claimant's guilt and assessed discipline.

The Organization has argued that the hazardous material car arrived after Claimant was off duty. The Organization maintains that Claimant had no knowledge of the car which was not listed on any of the Claimant's switching lists. It argues that the extra cars found were typical of yard conditions.

The Carrier has argued that Claimant had a responsibility to properly turn over the yard with the correct listing of track conditions. The Carrier argues that in addition to the fact that the conductor was not notified of a hazardous material car in his pickup, evidence clearly shows that Track 1, which was indicated as clear had two industrial cars on it. Tracks 12 and 13 which were marked as clear were not. Track 10 also contained cars not properly listed.

The record of evidence does not indicate how the hazardous and other cars were moved onto the various tracks. It is not denied that the dangerous car could have been moved prior to Claimant's shift. The Second Trick Yardmaster testified that it is possible in normal operations for a crew to have set off cars without Claimant being advised. Claimant denies any knowledge of the hazardous car in Elmira Yard during his tour of duty.

In our complete search of the record and full assessment of all arguments raised, we find insufficient evidence to support the charge or show a violation of the Agreement. The Carrier has not met its burden of proof with sufficient evidence that Claimant was responsible for or knowledgeable of the dangerous car and other track conditions. There is insufficient evidence that he should have known or could have known of any of these moves. While this is a very serious issue for the Carrier, it has failed to provide sufficient probative evidence in this record linking the errors to any concrete action or inaction on the part of the Claimant.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1991.