

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 24197  
Docket No. 43863  
92-1-C-4573

The First Division consisted of the regular members and in addition Referee Harvey A. Nathan when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"1. Engineer D.E. Baldrice, Northeast 2 District (Antoine, Michigan) requests the five (5) day actual suspension issued on March 1, 1991 be completely removed from his service record and that he also be removed from the C&NW Discipline System. Engineer Baldrice also request that he should be fully compensated for all time lost. Claim premised on BLE Rule 41, copy attached as Employees' Exhibit A.

Engineer Baldrice was investigated on February 27, 1991 and issued five days suspension on March 1, 1991 under C&NW Discipline Notice No. 984 on the following charge:

'Your responsibility in connection with damage to locomotives FRVR 815-820-831-832 while employed as Engineer on Antoine Job 01 on February 11, 1991.'

Copy of transcript attached as Employees' Exhibit B."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record band 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.

The Claimant, an engineer with 31 year's seniority, was assigned to switching duties at the Antoine Yard in Upper Michigan. The Claimant was charged and issued a five-day suspension in accordance with the Carrier's Discipline Policy.

The Carrier's conclusions are based on circumstantial evidence. While circumstantial evidence may be sufficient to establish the culpability of the accused, it cannot be so used when the evidence relied upon also supports other conclusions which would exonerate the accused. The evidence in this case is fraught with theories and explanations which tend to establish that someone other than the Claimant was responsible for the flat spots. It is sufficient to simply list some of the evidentiary problems.

1. The Mechanic-In-Charge found flat spots on FRVR 831 three days before the Claimant allegedly caused the problems for which he was charged.

2. FRVR 815-820 were not inspected for several days prior to the date the Claimant was charged.

3. Prior to the operation of the engines in question by the Claimant, the Mechanic-In-Charge found that the engines had been moved by someone unknown.

4. Although both the Trainmaster and the Mechanic-In-Charge testified that the flat spots were put on at the same time, Claimant did not operate the four engines at the same time.

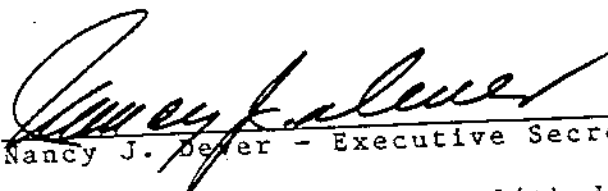
5. CNW 4109 which was coupled with FRVR 815-820 did not develop flat spots.

Clearly, the Carrier's evidence is insufficient and the claim must be sustained. The discipline shall be expunged from the Claimant's record and he shall be compensated for all time lost.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1992.