

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 25318  
Docket No. 44889  
02-1-99-1-I-1656

The First Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
(Canadian National / Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim of Illinois Central Railroad Engineer P. L. Wallace for removal of twenty (20) day suspension assessed for the alleged violation of IC General Rule A, Operating department Rule 8 and Air Brake and Train handling Rule 309 in connection with allegedly leaving his engines improperly unattended while working as crew member on LNOMC-14 at approximately 0755 hours on November 14, 1998.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant, Locomotive Engineer P. L. Wallace, was first employed with the CN/IC Railroad as a Brakeman at McComb, Mississippi, on February 2, 1973. On April 10, 1974, the Claimant was promoted to the position of Locomotive Engineer.

On Saturday, November 14, 1998 the Claimant was the regular assigned Engineer on train LNOMC-14 Local with crew members: Student Engineer A. Crudup, Jr., Conductor L. W. Roberts and Brakeman C. S. Spitchley. The assignment operates from New Orleans, Louisiana, to McComb, Mississippi. On the morning of November 14, 1998, the LNOMCH-14 crew performed their duties at the Mays Yard in New Orleans. After securing their engines, the crew took their meal period at approximately 7:55 A.M. While at meal period, Assistant Trainmaster Arlin Todd solely performed an Efficiency Test No. 24 on the locomotive to determine if it had been left properly unattended in accordance with Rule 309.

The Claimant received a letter of Investigation on November 17, 1998 charging that a Hearing was pending to develop the facts in whether or not he had left his engines improperly unattended on the morning of November 14, 1998. An Investigation followed and Wallace received a letter dated December 4, 1998 which found him in violation of IC General Rule A, Operating department Rule 8 and Air Brake and Train handling Rule 309. The Claimant was further suspended from service for a period of 20 days effective 1:00 A.M. Monday, December 14, 1998 and ending at 11:59 P.M. on Saturday, January 2, 1999. The Brotherhood of Locomotive Engineers filed an appeal on behalf of the Claimant.

The Organization contends that the Carrier violated the Current Controlling Agreement, when it improperly assessed a 20 day suspension on Railroad Engineer P. L. Wallace for allegedly violating IC General Rule A, Operating department Rule 8 and Air Brake and Train handling Rule 309 in connection with allegedly leaving his engines improperly unattended while working as crew member on LNOMC-14 at approximately 7:55 A.M. on November 14, 1998.

The Organization points out that Assistant Trainmaster Todd has been employed with the Carrier for just over one year and that by performing the efficiency test alone, he did not follow standard procedure on the date in question. In the case at hand, argues the Organization, the only evidence that the hand brake on the north engine was not set, that the generator field button was "on" and that the automatic brake handle was in the release position is the word of Assistant Trainmaster Todd.

The Organization further claims that Assistant Trainmaster Todd did not correct the alleged safety irregularities he found violating the Guidelines for Conducting Efficiency Tests and Inspections. The Organization points out that, in their opinion, the Investigation Hearing was fatally flawed, because the Hearing Officer

conducted himself in an inappropriate manner by instructing Arlin Todd not to answer certain questions and directly affecting the outcome of the testimony entered into the record. The Hearing Officer was also the witness, prosecutor and judge in this case, argues the Organization, therefore resulting in the Claimant not receiving a fair and impartial Hearing. The Organization also contends that a complete and accurate transcript does not exist based on errors made by the stenographer. The Organization is confident that the Board will remove the 20 days suspension and find that Wallace is not guilty of violating the aforementioned Rules because the Carrier failed to meet its burden of persuasion.

The Carrier contends that the Claimant received a fair and impartial Hearing and that "extensive latitude and opportunity" for questioning was granted to the Claimant's representation throughout the Hearing. The transcript reveals conclusively that Wallace violated IC General Rule A, Operating department Rule 8 and Air Brake and Train handling Rule 309 argues the Carrier. The Carrier points out that the Claimant's fellow crew members confirmed that the automatic brake valve was not set and that the Claimant did not deny his failure to comply with the Operating Rules when Assistant Trainmaster Todd counseled him.

Finally, the Carrier asserts that the discipline assessed was appropriate in light of Wallace's personal record of past Rule violations. The Carrier maintains that Assistant Trainmaster Todd's findings are very credible and should not be disregarded. Therefore, the Carrier requests that the Board sustain the finding of the 20 days suspension.

The Board finds that the account of the circumstances in this case results in a "net wash" between the parties. The violation regarding the hand brake on the north end is moot because it was determined that it was malfunctioning at the time of efficiency test No. 24. In regard to the generator field switch and automatic brake handle in the south engine, the Carrier offered as its only witness Assistant Trainmaster Arlin Todd who, it is undisputed on this record, performed the test without the presence of another individual.

While the Board will not normally "second guess" a Hearing Officer in matters of witness credibility, the circumstances in this case compel us to do so. The Board has found no reason to accept Todd's testimony as more credible than the testimony of the Claimant. In fact, the Board notes that Todd forgot that Conductor Roberts accompanied him and the Claimant to review the situation with the handling brake on

the north engine. Furthermore, the other crew members were unable to testify to the best of their recollection whether or not the safety tasks in the south engine were performed by the Claimant or to the content of the conversation between Assistant Trainmaster Todd and Engineer Wallace. Based upon the foregoing, the Board finds that the 20 days suspension shall be removed from the Claimant's record, and he be made whole for any monies lost.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Dated at Chicago, Illinois, this 10th day of April, 2002.