

PUBLIC LAW BOARD NO. 3195

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY  
TO )  
DISPUTE) UNITED TRANSPORTATION UNION-T

STATEMENT OF CLAIM: Request for the removal of a 30 days actual suspension, with pay for all time lost, in favor of Kenova District Conductor B. L. Short, Brakemen J. W. Maynard and T. L. Hunt, assessed account their alleged responsibility in connection with being in violation of Rule "G" on December 10, 1980.

FINDINGS: This Public Law Board No. 3195 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute, the claimant crew was notified to attend a formal investigation in connection with their responsibility in violating Rule G while working as crew members of Train X08W December 10, 1980, near Naugatuck, West Virginia. Pursuant to the investigation, the claimants were assessed 30 days actual suspension.

The transcript contains 61 pages of testimony and exhibits consisting of the results of blood samples. All the testimony has been studied. Each of the claimants denied knowledge of the beer, yet all three were on the caboose. The beer had been placed in the freezer compartment of the refrigerator. The Carrier is justified in reaching the conclusion that another employee did not leave the beer in the freezer, and the inevitable results must be that one of the three employees brought the beer onto the caboose and placed it in the freezing compartment.

From the testimony, the evidence is sufficient for the Carrier to find that Brakeman T. L. Hunt purchased the beer and brought it on board the caboose. The evidence is insufficient to establish that Conductor Short and Brakeman Maynard had knowledge of the beer being on the caboose. It is quite likely that they did have such knowledge, however, that is insufficient evidence for the Carrier to find them guilty. The claims for Brakemen J. W. Maynard and Conductor B. L. Short are sustained, and the claim for T. L. Hunt is denied. All three may be equally guilty, but the evidence is only sufficient to find Claimant Hunt guilty.

AWARD: Claim disposed of as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

*Preston J. Moore*

Preston J. Moore, Chairman

*JM Hicks*

Union Member

*August 30, 1984*

*E M Martini*

Carrier Member