

**Award No. 1089**

**Docket No. 1010**

**2-LV-CM-'45**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (CARMEN)**

**LEHIGH VALLEY RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That the carrier used coercive and intimidation methods to effect a hearing at 1:00 P. M. on April 8, 1944, of an incident which involved Car Inspector C. Ferrinola about two and one-half hours prior thereto.

2. That the carrier held a hearing at 1:00 P. M. on April 8, 1944, to impose discipline upon Car Inspector C. Ferrinola in violation of the controlling agreement, and particularly Rule 37.

3. That in consideration of the aforesaid the carrier be ordered to—

(a) Reimburse Car Inspector Ferrinola for the time he was held out of service on May 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, 1944, and

(b) Clear the service record of Car Inspector C. Ferrinola of the notation affixed thereon by the general car foreman on May 9, 1944.

**EMPLOYEES' STATEMENT OF FACTS:** The claimant, C. Ferrinola, has been in the service of the carrier since January 7, 1917, as a car inspector and was regularly assigned on the 7:00 A. M. to 3:00 P. M. shift at the passenger depot, Buffalo, New York. His duties consisted of coupling up engines to trains and making terminal air-brake tests to trains.

An accident occurred to car 1034 when the claimant coupled the engine to train 10 at about 9:45 A. M. on April 8, 1944, because carmen had left No. 6 journal box jacked up for a periodical inspection of the journal bearings and wedge without the protection of a blue flag. This train was scheduled to depart at 10:05 A. M., but it left about 23 minutes late, or about 10:28 A. M.

About two minutes after the train left, at 10:30 A. M., Mr. Doty, general car foreman, instructed the claimant and his local committee to report to the office of the master mechanic for a hearing that day at 1:00 P. M. The local committee objected to this and requested that it be postponed until later so that the committee could have time to properly check into the circumstances and arrange to secure the presence of such witnesses as they deemed to be proper. Mr. Doty, the general car foreman, thereupon informed the committee

on the method of holding the hearing and the alleged violation of Rule 37 of their Working Agreement, apparently taking no exception to holding Mr. Ferrinola responsible for the accident.

Inasmuch as Rule 37 was fully complied with and there was neither coercion or intimidation used in the investigation, and as the investigation indicated clearly Mr. Ferrinola's responsibility for the accident, the claim should be denied.

**FINDINGS:** The Second 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 employe 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.

It is not the function of this Board to substitute its judgment for that of the carrier in matters of discipline. See Award 2498, Third Division. However, there must be evidence to sustain the penalty inflicted. A transcript of the evidence of the hearing is submitted. Under the agreement car inspectors and car repairers when they are making repairs on a car must protect themselves by placing a blue flag on the track. No blue flag was placed as required by the rules. The claimant did not know that the repair men had jacks set. He knew that men were working around the cars. He claims that he notified the men, and that, "Mr. Doty was right there when I notified the men." Mr. Doty was the general car foreman. This accident would not have happened had the blue flag been placed by the car inspector or the car foreman as required.

We are of the opinion, under the record submitted, the cause of this accident was not due to the claimant's failure to obey the rule, but rather due to the failure of others to place the blue flag in its proper place. The claimant will be reinstated with pay for time lost.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling,  
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1945.