

Award No. 1111

Docket No. 1054

2-LV-CM-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That Car Inspector Gustave Reich was unjustly dealt with when he was removed from service on August 16, 1944, for a period of three days.

2—That Car Inspector Gustave Reich be reimbursed for the three days time lost at \$7.84 per day, or a total of \$23.52, and that the notation made on his personal record be cleared.

EMPLOYEES' STATEMENT OF FACTS: Gustave Reich, hereinafter referred to as the claimant, has been regularly employed by the carrier at Packerton, Pennsylvania, since September 12, 1918, and was regularly assigned as car inspector from 3 P.M. to 11 P.M., seven days per week in the train yard at Packerton, at the time he was removed from the service, August 16, 1944.

On August 14, 1944, this claimant was informed by General Foreman R. Teichert that effective August 16, 1944, he was suspended from the service for a period of three days, on the alleged account of having failed to detect a lower broken truck side on LV Car 27106 on June 24, 1944, copy of which is submitted and identified as Exhibit A.

There was a question and answer investigation of this occurrence held on Sunday, July 2, 1944, copy of which is submitted and identified as Exhibit B.

This car in question failed at Caywood, New York, a distance of approximately 200 miles from Packerton Train Yard, and after having passed inspections at Coxton and Sayre Train Yards.

Depriving this claimant of his right to work his regular assignment for three days has been appealed as provided in the controlling agreement, effective November 1, 1942, and having discussed it thoroughly with the highest designated officer of the carrier to handle such matters the claim was declined and which is confirmed by letter addressed to the undersigned by Mr. Haines dated January 12, 1945, copy of which is submitted and identified as Exhibit C.

POSITION OF EMPLOYEES: Rule 35, captioned "Grievance," in pertinent part reads:

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.

The claimant after a hearing was disciplined for failure to discover a cracked side-frame in a car. The frame broke while the train was en route between stations and a serious accident resulted. The claimant was apparently held responsible as being the last inspector to make a terminal or thorough inspection of the car.

Before discipline is imposed, an employe charged with a dereliction of duty is entitled to a hearing. This was given to the claimant on July 2, 1944, and discipline was imposed August 14, 1944. The only evidence at the hearing discloses that the claimant inspected the car at Packerton and that the accident took place while the train was en route after leaving Packerton. Something more than this is necessary to justify discipline, even assuming that the defect may have been in existence when the inspection was made. It should appear that it was so located and of such a nature that the inspector in the proper performance of his duties should have discovered it. This is the inevitable deduction to be drawn from Award 684.

It is true after the hearing was closed and after discipline was imposed certain affidavits were obtained covering this point. These cannot be considered by this Board. The claimant was entitled to have had this evidence introduced at the hearing that he might have had the opportunity to rebut it and to examine the witnesses. For this Board to consider this evidence would deny to the claimant a fundamental right. All the evidence should have been considered by the official who conducted the hearing and imposed the penalty. The only function of this Board is to determine whether on the evidence introduced before him the finding is so unreasonable as to justify interference here. In this instance it is apparent that the discipline imposed was unwarranted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: (Sgd.) J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1946.