

Award No. 1113
Docket No. 1058
2-C&WC-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. 60, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Car Inspector W. J. Sockell be restored to service with seniority rights unimpaired and compensated for all time lost retroactive to March 24, 1942.

EMPLOYEES' STATEMENT OF FACTS: At the time of his dismissal, April 1, 1942, W. J. Sockell had been in the service of the C&WC Railroad for approximately 20 years. More than 16 of his 20 years was spent at Spartanburg, S. C., where he was employed principally as car inspector.

Sockell was on duty on March 19, 1942. He inspected and dispatched Extra 402—Spartanburg to Augusta—freight train, to which was attached Office Car No. 100, private car of the general superintendent, Mr. L. S. Jeffords.

Cab B-75 was scheduled for this train, but was found defective and Cab B-71 was substituted. Before making this change of cabs, Inspector Sockell reported the condition of Cab B-75 to the yard conductor and then to the general superintendent, Mr. Jeffords, who was occupying his private car at the time.

Train 402 left Spartanburg at 1:00 P.M. and arrived in Augusta, Ga. at 7:45 P.M. It was inspected on arrival by Inspectors Keels and Rhine. No exceptions were taken to Cab B-71. They did, however, bad order ACL 81398 for broken rim wheel R 2. Cab B-75 arrived in Augusta from Spartanburg the following morning, March 20, in Train No. 94. The entire train, including cab, was inspected by Inspectors Mason and Mixon. No defects were noted on the cab on first inspection.

A second inspection was made at the specific direction of Car Foreman V. J. Lamb, who had gone to the inspection yard to meet this train, and center sill and subsill were found defective.

Inspectors Mason and Mixon also inspected Cab B-71 and gave Mr. Lamb a statement of the condition of both cabs.

On March 21 Mr. C. S. Sanderson, assistant superintendent, and Mr. V. J. Lamb, general foreman, car department, proceeded to Spartanburg where they, along with Mr. S. J. Lanier, foreman at Spartanburg, gave Inspector Sockell an investigation for "Improper performance of Duties."

Ga., 10 A. M., March 27, 1942, copy of the notice was furnished the general chairman of the carmen, Mr. J. B. Harrell.

The hearing was held on March 27, 1942, as designated, copy of transcript of the hearing and investigation shown as carrier's Exhibit A. Copy of the notice sent to Foreman Lanier to deliver to Mr. Sockell is shown as carrier's Exhibit B. In the hearing and investigation Mr. Sockell admitted it was his responsibility for proper inspection of cars at Spartanburg during his tour of duty, and the defective wheel found on ACL 81398 was in dangerous condition and was his responsibility, that the part found at I.A.C. plant came off the wheel under ACL 81398, that the defect in the wheel was an old defect, that he knew the extra trains were being run between 11:30 A.M. and 1:20 P.M., that it had been his regular practice to inspect the cabs for these trains in the upper yard, that he knew at about 10:30 A.M. the cab was going out at 1 P.M., that he had received instructions to detect every condemnable defect whether thin flanges, vertical flanges, seam in ball of wheels—all defects.

In the hearing and investigation it is proven by Foreman Lanier of Spartanburg, Car Inspectors Keels, Mason and Mixon (at Augusta), that Cab B-75 was in good serviceable condition and perfectly safe for any service.

After the hearing and investigation, careful consideration was given to this case, and carrier realized action must be taken for efficiency in operation, and dismissed Mr. Sockell from the service. Copy of notice of dismissal shown as carrier's Exhibit C.

The carrier has had considerable trouble with Car Inspector Sockell's activities in Spartanburg, both as to his service as car inspector and his arbitrary attitude in handling affairs, and in the several conferences with the representatives, the carrier's attitude was not contrary, as there were no personal feelings connected with the Sockell case, the action taken was for efficiency. The arbitrary attitude of Mr. Sockell, and his failure to properly perform his work as a car inspector, is readily recognized in the investigation. The condition found in ACL 81398 was very dangerous, only by a miracle a serious accident did not occur, and the laxity of Car Inspector Sockell in not finding this wheel in his inspection is evidence that he is indifferent to his work, and his action in the inspection of the cabs evidenced poor judgment in the inspection of cars.

By the evidence shown in the investigation the carrier contends that the discipline administered was justified and not in violation of any rules of the agreement. The Board's attention is called to the Subject of Dispute as appealed to the Board, as at no time did the employees request include compensation for time lost while the case was handled with the carrier. When the case was discussed with the carrier on January 3, 1945, it was understood Mr. Sockell was employed on the Seaboard Railway at Hamlet, N. C., and had been there for sometime.

The carrier contends there has been no violation of the agreement, or unjust treatment, and respectfully requests the National Railroad Adjustment Board, Second Division, to deny this claim.

FINDINGS: The Second 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.

The parties to said dispute were given due notice of hearing thereon.

The claimant was found guilty of the three separate charges which were preferred against him and dismissed from the service of the company.

The first two charges, as indicated by the evidence in support of them, were trivial. It is not at all clear that the duty was on this particular inspector to inspect the cab before it was attached to the train. He inspected it afterwards when he found that the superintendent's car was to be coupled to it and found a slight defect and substituted another cab for it. If he erred here, it was on the side of caution. To penalize him for so doing is unjustified. No discipline was warranted with respect to either of these charges.

The question, therefore, is whether the penalty of dismissal was justified for the claimant's failure to detect the defect in the wheel of the coal car. The record indicates that some discipline was justified for this failure. We cannot, however, overlook the fact that the defect was apparently caused in the manufacture of the wheel, which had passed through many inspections and was only discovered when a piece of the rim broke off. Conceding that this Board should only interfere in a case of discipline in an extreme case, we feel that the penalty imposed here is altogether beyond reason.

The claimant should be restored to duty as of the date of his discharge with seniority rights unimpaired but without compensation for time lost.

A W A R D

Claim sustained as above qualified.

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.