

Award No. 1121
Docket No. 1056
2-D&RGW-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. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DENVER & RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Carman Guy Hess is entitled to be reinstated to all service rights, his record cleared of the charges, and reimbursed for the wage loss suffered arising out of having finally been unjustly discharged on April 30, 1945, under the applicable agreement.

EMPLOYEES' STATEMENT OF FACTS: Carman Guy Hess, regularly employed at Monarch, (a point within the seniority district of Salida, Colorado), became ill and underwent a surgical operation on March 2, 1945. He was assigned to work at Marshall Pass, Colorado, on March 27, 1945, (a point on the narrow gauge between Salida and Gunnison, Colorado, and within the seniority district of Salida, Colorado), as his job at Monarch had been abolished during his absence.

On April 4, 1945, Carman Hess' physical condition resulting from the operation on March 2, became aggravated, whereupon he came down to Salida, and thereafter to Pueblo for medical attention by his attending surgeon.

He was subsequently removed from service pending an investigation, which was held on April 17, 1945.

On April 18, 1945, he was notified by the foreman to report for work, and at the same time he was handed the following letter:

Mr. Guy Hess: Salida—April 18th, 1945.

A formal investigation will be held in the Car Foreman's office at Salida, 10 AM, Saturday April 21st, 1945, to bring out the facts and place the responsibility in connection with your claiming time not worked April 4th, 5th and 6th, 1945.

Your presence as a principle is requested with a representative if you so desire.

P. F. Giesking
Master Mechanic

Subsequent to investigation, which was held on April 27, Carman Hess was notified as follows:

permission, he submitted time cards for April 4, 5, and 6, 1945, claiming a day's pay each date at the monthly rate of \$253.79. As result thereof, and in connection therewith, an investigation was held April 27, 1945, and from the facts developed, Mr. Hess was dismissed from service. Request of the Organization that Mr. Hess be reinstated and paid for time lost was denied by the management.

POSITION OF CARRIER: Marshall Pass is a station on our narrow gauge line between Salida and Gunnison, Colorado, being twenty-five miles west of Salida.

As set forth in the carrier's statement of facts, Mr. Hess exercised his seniority and bid in job of carman at Marshall Pass, the rate of pay of the position being \$253.79 per month.

Mr. Hess reported for duty at Marshall Pass March 27, 1945, on the 9:00 A. M. to 9:00 P. M. shift. He worked March 27 and 28, coming to Salida the night of the 28th with some minor complaint in connection with living quarters at Marshall Pass. He again left Salida for Marshall Pass at 3:00 P. M., March 30, and although he had at that time only worked two days at Marshall Pass he was compensated for the two days he was in Salida—March 29 and 30.

Also as stated in the carrier's statement of facts, Mr. Hess again left Marshall Pass for Salida the night of April 3, or early in the morning of April 4, subsequently going to Pueblo and Denver, being in Pueblo and Denver on April 6. To substantiate the statement of the carrier that Mr. Hess did not perform service at Marshall Pass on April 4, 5, and 6, the attention of the Board is directed to Mr. Hess' testimony in the investigation (Page 2), transcript of which is submitted.

The Board's attention is also directed to Mr. Hess' testimony (Page 2 of the investigation), in which he admits making out and signing time cards for April 4, 5, and 6, and the testimony of Mr. Vigor (Page 5 of investigation), who is the one other carman employed at Marshall Pass, in which he states that Mr. Hess asked Mr. Vigor to send in his (Mr. Hess') time cards for April 4, 5, and 6, and that he did so. Unquestionably, Mr. Vigor's statement is proof that Mr. Hess attempted to obtain at least three days' pay when he performed no service whatsoever.

It has been customary for a good many years to give the carmen employed at Marshall Pass and Tennessee Pass a day or two off per month to go to Salida, and Salida only, either to see their families, secure medical attention, or purchase groceries, and pay them while off, for the reason the other men at these points met the service requirements without additional expense to the carrier. However, in every instance, the employe involved has either secured permission in advance or reported to the car foreman at Salida either on arrival or as soon thereafter as possible.

The carrier contends in this case that:

1. It has proven Mr. Hess willfully claimed time not worked on April 4, 5, and 6, 1945;
2. The testimony developed in investigation fully justified its action in dismissing Mr. Hess from service;
3. The action of the carrier in this case should not be disturbed.

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 action of the carrier in imposing the discipline it did in this case was not only not unreasonable but was fully justified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of March, 1946.