

Award No. 1197

Docket No. 1119

2-LV-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook 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: That Car Repairer Raymond R. Walton was unjustly dealt with when he was deprived of his service rights on December 24 and 25, 1944, and that accordingly the carrier be ordered to reimburse him in the amount of \$15.68, for the time lost on said dates, including the clearance of his record of notation made thereon.

EMPLOYEE'S STATEMENT OF FACTS: Raymond R. Walton, hereinafter referred to as the claimant, has been employed by the carrier as a carman at Hazleton, Pennsylvania, since October 14, 1924, and his regularly assigned hours were from 7 A. M. to 3 P. M., seven days a week at the time he was removed from the service on December 24 and 25, 1944.

The claimant was required to submit to a question and answer investigation on November 15, 1944, and a copy of same is submitted and identified as Exhibit A.

More than one carrier officer has refused to furnish a copy of the investigation to the claimant or his committee, and this is affirmed by copy of letters addressed to and received from Master Mechanic Bennett, submitted herewith and identified as Exhibits B, B-1 and B-2.

On December 12, 1944, the claimant received formal notice from General Foreman Nolf that he would be given two days' actual suspension due to having been held responsible for failure to properly repair LV Car 25439 on October 5, 1944, and that notation accordingly would be made on his service card, copy of which is submitted and identified as Exhibit C.

On December 18, 1944, the claimant was verbally notified that he would be suspended from the service on December 24 and 25, 1944.

When the general foreman's decision of December 12 was put into effect on December 24 and 25, 1944, the local committee appealed to Master Mechanic Bennett on December 25, 1944, and a copy of same is submitted and identified as Exhibit D.

After the local committee failed to receive any consideration from either the general foreman or the master mechanic, the matter was then re-

from Coxton, it failed enroute at a point only 75 miles distant when hot journal developed at location R-2, resulting in cut journal and journal bearing being broken in three places. It was necessary to set the car out at Ulster for repairs, causing delay to symbol freight train, as well as delay to the car.

At investigation and hearing to determine responsibility in this case, the evidence developed Car Inspector Walton assisted in making repairs to car LV 25439, as outlined in the above statement of facts, and also inspected the journal bearing which failed enroute. Without question, it is one of the more important duties of a car inspector to properly perform the work to which he is assigned, and is responsible for work performed, as was done on the car in this case, to insure the car's moving to destination without failure. The fact this car failed after moving the short distance it did is evidence the work performed by Car Inspector Walton and the inspection he afforded the car were not performed properly. It is the judgment of the responsible officers of this railroad that such failures on the part of car inspectors cannot be passed without discipline, as this is the recognized method of properly impressing employees with their obligation and responsibility of performing their duties in the proper manner for the safe and uninterrupted movement of trains.

We believe the discipline imposed in this case was justified and reasonable, consistent with the facts developed, and respectfully ask that the Board sustain our action.

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 employees 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.

Even though the Division does not sustain the carrier in its application of discipline to the car service employe in this case, it is not unmindful of the carrier's responsibility in operating a railroad under numerous laws and regulations, nor of the employees' highly important responsibilities and duties in re car inspection, repairs, etc. On the proper or improper performance of their duties depends, to a large extent, the safe or unsafe movement of trains.

When there exists, as in the several cases before this Division, defects in equipment, discovered after inspection or work had been performed, in some instances quite some time later, there is no doubt but that certain defects existed and were not discovered or that certain work was not performed.

In each case, there is not the direct evidence of guilt on the part of the employe accused, that would warrant this Division in holding that each of the employees had been justly treated by the carrier in the application of discipline by actual suspension.

The decisions or judgments of the carrier in these cases hinged largely on assumption—there was no direct proof—nor could it be held that there was high probability that the employe suspended was, under all the circumstances cited, individually, wholly or mainly responsible as charged.

From a review of the record and consideration of the oral and written evidence, we find the discipline through suspension in these cases was not warranted account of lack of sufficient evidence or reasonable proof of guilt. There does not appear just cause for suspension.

AWARD

The claims that the employe was unjustly dealt with is sustained and clearance of service record will be made.

The claim for time lost or reimbursement is sustained only insofar as loss of earnings may be involved, due to the employe being scheduled or not scheduled to work on the dates suspended.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1947.