

Award No. 1199

Docket No. 1122

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 EMPLOYES'
DEPARTMENT, A. F. of L.—CARMEN**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Car Leader Frank Bachman was unjustly deprived of his service rights on November 10th and 11th, 1945, and that accordingly the carrier be ordered to reimburse him for said time lost, including the clearance of his service record.

EMPLOYEES' STATEMENT OF FACTS: Frank Bachman, hereinafter referred to as the claimant, has been regularly employed by the carrier at Oak Island, New Jersey, since October 26, 1922, and was regularly assigned as a car leader from 6:00 P. M. to 2:00 A. M., six days per week, in the Oak Island inspection yard at the time he was removed from service for two days November 10 and 11, 1945.

On November 9, 1945, the claimant was informed by Superintendent C. L. Patterson that he would be suspended for a period of two days for failure to find defects which existed on couplers of car L.V. 75947 and ATSF 137753 at time of his inspection on October 6, 1945, copy of which is submitted and identified as Exhibit A.

There was a question-and-answer investigation of this occurrence held on October 9, 1945, copy of which is submitted and identified as Exhibit B.

Immediately upon arrival of the cars in question, the claimant made an inspection of the couplers at which time there were no defects.

Depriving this claimant of his right to work his regular assignment for two 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, which is confirmed by letters to the undersigned by Mr. Wagner, dated November 12, and December 27, 1946, copies of which are submitted and identified as Exhibits C and C-1.

POSITION OF EMPLOYEES: Rule 35, caption "Grievances", in pertinent part, reads:

"Should an employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated the case shall be taken . . ."

were made by the train dispatcher for the car forces at Oak Island to make thorough inspection of cars between which parting of train occurred, in order to determine the cause therefor, and in the event of any mechanical defect of cars responsible for the partings of train, to arrange for proper repairs to avoid any further irregularity in train movement of such cars. Car Leader Bachman, whose tour of duty was completed prior to arrival of the train at Oak Island, was instructed to remain at work on overtime to make inspection of the cars involved. On arrival of the train, he had no other duty to perform except to inspect the cars in question and, after doing so, he reported no mechanical defect of the cars which would have in any way contributed to the partings of the train en route. His inspection of the cars was made in the yard and, upon failing to find any cause for the parting of the train at three different locations on the road trip, he did not arrange for the cars to be sent to the shop track for more thorough inspection.

This was subsequently arranged for on orders of the foreman in charge, and when the cars were inspected on the shop track, it was found the cut lever was bent and fouling on the "B" or west end of LV 75974, which allowed no slack and caused anti-creep feature to become disengaged on account of the lock being unable to drop all the way down. This defect of the car was responsible for the partings of the train, and should have been found on inspection by Car Leader Bachman at time of his inspection.

It is to be recognized that one of the important duties of a car inspector upon being assigned to make inspection of cars involved in an irregularity, such as existed in this case, is thoroughness in his inspection, and the evidence in this case discloses Car Leader Bachman carelessly performed the work to which he was especially assigned, in failing to find the defect which existed in car LV 75974, which was subsequently found upon inspection at the shop track. It is the judgment of the responsible officers on 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 to perform their duties in the proper manner for the safe and uninterrupted movement of trains.

We believe that the discipline imposed in this case was justified and reasonably 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 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.

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 employes' 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 employes had been unjustly 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 claim 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.