

Award No. 1201

Docket No. 1124

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 Carman Louis Fager was unjustly deprived of his service rights on May 31 and June 1, 1946, and that accordingly the carrier be ordered to reimburse him for said time lost, including clearance of the notation made on his service record.

EMPLOYEES' STATEMENT OF FACTS: Louis Fager, hereinafter referred to as the claimant, has been regularly employed by the carrier at Bethlehem, Pennsylvania, since May 2, 1940, and was regularly assigned as a car inspector from 7:00 A.M. to 3:00 P.M., six days per week, at Bethlehem, Pennsylvania, at the time he was removed from service for two days, May 31 and June 1, 1946.

On May 26, 1946, the claimant was informed by Superintendent C. L. Patterson that he would be suspended for a period of two days for failure to see that knuckle lock was properly seated when cars were coupled at Bethlehem, resulting in train parting between second and third rear cars while making station stop at Allentown, Pennsylvania, on February 26, 1946, copy of which is submitted and identified as Exhibit A.

There was a question-and-answer investigation of this occurrence held March 2, and April 24, 1946, copies of which are submitted and identified as Exhibits B and B-1.

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 "Grievance", in pertinent part, reads:

"Should an employee 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. . . ."

and within the meaning of the provisions of this rule, it is respectfully submitted that the claimant was an employee subject to the controlling agreement, that he believed he was unjustly dealt with and that said agreement was violated when he was deprived of his right to work his regular assignment for two days, effective May 31, and June 1, 1946, at 7:00 A.M.

parted at Allentown and then proceeded from that point to Buffalo, a distance of 354 miles, without any further difficulty.

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 employes with their obligation 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 responsibility of the men and 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 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.

Even though the Division does not sustain the carrier in its application of discipline to the car service employee 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 employee accused, that would warrant this Division in holding that each of the employes 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 employee 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 employee 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 employee 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.