

Award No. 1336

Docket No. 1250

2-ACL-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement the circumstances surrounding the receiving, inspecting, and forwarding of PRR Car. No. 358622 and P&LE Car No. 47526, at Wadesboro, N. C., and Florence, S. C., on November 27, 1947, do not warrant the discipline administered, of thirty days' suspension to:

- a) Car Inspector C. B. Gray from Feb. 1, 1948 to Mar. 1, 1948, inclusive, resulting in wage loss of \$388.22.
- b) Car Inspector W. H. Ayers, from Jan. 2, 1948 to Jan. 31, 1948, inclusive, resulting in wage loss of \$340.48.
- c) Car Inspector C. W. Walker, Sr., from Jan. 2, 1948 to Jan. 31, 1948, inclusive, resulting in wage loss of \$340.48.
- d) Car Inspector G. C. Bonnette, from Feb. 1, 1948 to Mar. 1, 1948, inclusive, resulting in wage loss of \$351.12.
- e) Car Inspector J. S. Head, from Jan. 2, 1948 to Jan. 31, 1948, inclusive, resulting in wage loss of \$340.48.

2—That accordingly the carrier be ordered to reimburse these aforesaid employes the amounts stipulated after their respective names and clear the record of each thereof of all alleged charges preferred against them.

EMPLOYEES' STATEMENT OF FACTS: C. B. Gray was employed at Wadesboro, N. C., September 2, 1922, as joint car inspector and has remained continuously in the service at that point and in the same capacity since date of employment. From September 29, 1922, to October, 1938, we maintained two inspectors, or one inspector and one working foreman, at Wadesboro. Since October, 1938, Mr. Gray has been the only mechanical employe at Wadesboro Junction, working generally over a spread of sixteen hours, or from 5:00 A. M. to 9:00 P. M. daily. Effective December the 16, 1940, Rule 33 of the current agreement was by special agreement extended to Wadesboro. Inspector Gray has thereafter been compensated on a monthly basis as provided therein.

The inspectors at Florence, S. C., involved in this dispute were first employed as car repairers as follows:

lenient with these employes, especially in view of the extreme seriousness of the accident which occurred as a consequence of their failure to detect and bad order cars not properly loaded. The circumstances would have fully warranted dismissal, but carrier elected, in view of the many years of service of these five men, to only discipline them with 30 days' actual suspension. Suspension, tempered with justice, is the only course of action left to the carrier, short of dismissal, in enforcing rules.

The organization has apparently lost sight of the fact a serious and costly accident occurred because of the negligence of these inspectors in not having properly performed their assigned inspection duties and bad ordered the two cars of pipe when they did not conform to loading specifications. It was a duty of the five inspectors to be familiar with the loading requirements and when those requirements were not met, it was then their duty to take appropriate steps to see that this was done. Those appropriate steps would, in this instance, have been the bad ordering of these two cars until such time as they were properly secured.

As was so aptly stated in this Division's Award No. 153, with Referee John P. Devaney participating:

"The control by the employer over the employe is the responsibility of Management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer."

In awards too frequent to require enumeration or citation, this Division has stated:

"The evidence of record does not disclose adequate grounds for disturbing the disciplinary action of the Management."

These words are indeed here applicable and this Division is requested to so rule, and decline the 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 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.

In light of the general handling accorded a large shipment of the same commodity extending over a period of many weeks, at several points and by numerous employes, including supervisors, without real issue being made respecting the method of loading, we can only reach one conclusion. Clearly there was basis for the general and widespread misunderstanding in respect to the proper interpretation and application of the A. A. R. rules involved herein.

This is not a case where a clearly defined and understandable rule has been carelessly ignored or ineptly construed.

Accordingly, under the circumstances of the instant case, we find the suspension unjust and in abuse of discretion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of August, 1949.