

Award No. 1428

Docket No. 1354

2-MP-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: a) That under the current agreement, on September 21, 1948, Car Inspector P. W. Smith and Car Oiler Wm. DeCaeny, employed in the Kansas City train yard, were unjustly suspended from service and unjustly discharged from service October 5, 1948.

b) That accordingly the carrier be ordered to compensate P. W. Smith at car inspectors' rate of pay for forty-four (44) days at the straight time rate and six (6) days at the time and one-half rate, and William DeCaeny at the oilers' rate of pay for the same number of days (44) at the straight time rate and the same number of days (6) at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Car Oiler Wm. DeCaeny has been in the employment of Missouri Pacific at Kansas City as helper since January 12, 1948, while Car Inspector P. W. Smith has been continuously employed both as freight car truckman and car inspector since August 16, 1928, both employees being hereinafter referred to as the claimants.

On the night of September 21, 1948 Claimant Wm. DeCaeny, while in pursuit of his regular duties as car oiler and box packer, noticed door on north side of car ARTX 133 ajar at bottom and upon arrival at caboose end of train, he crossed over to south side to continue his duties, and on completion of same, he then sought to determine why this door on ARTX 133 was pushed out at the bottom. Finding door unsealed, he pushed it open and finding that some of the boxes of merchandise in the car had shifted against the door, he entered the car for the purpose of clearing the obstruction, to permit the closing of door. In doing so, one box of merchandise slipped to the threshold at the door opening and as he continued his efforts, Claimant Car Inspector P. W. Smith arrived on the scene, and when he got to the car to focus his flashlight on the inside, this box that was on the car threshold dropped between him and the car, to the ground. He advised Claimant DeCaeny to leave the car, that it was ready to move.

When he reached the ground he with other assistance, closed the door and as the train began to move, he saw the box on the ground. As the train was in motion, he picked the box up to avoid it being struck and demolished by car trucks, and while in the act of carrying it to a point of safety,

2. There was substantial evidence adduced at the hearing to support the charge preferred against the claimants.
3. The carrier, in the exercise of its managerial function and based upon the evidence produced at the hearing, determined that discipline should be assessed.
4. When considered in relation to the gravity of the offense with which the claimants were charged, the discipline assessed was not arbitrary nor capricious; neither was it harsh.

Based upon the facts contained herein this claim should be denied as being wholly without merit, contrary to the practice in matters of discipline throughout the railroad industry and in conflict with the awards of all divisions of the National Railroad Adjustment Board.

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.

The Division finds no grounds for disturbing the discipline administered.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1951.