

Award No. 1436

Docket No. 1363

2-Wab.-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. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carmen Welders L. E. Johnson and Martin Herman were unjustly dealt with when they were deprived of their service rights for ten (10) days beginning June 22, 1950, and that accordingly, the carrier be ordered to reimburse them for the time lost and clear their record of any notation made thereon.

EMPLOYEES' STATEMENT OF FACTS: L. E. Johnson and Martin Herman, hereinafter referred to as the claimants, have been employed by the carrier as carmen at Decatur, Illinois, since September 10, 1947, and September 9, 1943, respectively, and their regularly assigned hours as carmen welders were from 3:30 P. M. to 12 midnight five (5) days a week at the time they were removed from service on June 22, 1950.

The claimants were required to submit to a question and answer investigation June 14, 1950 on the charges of improper welding work on Wabash Engine No. 82064, June 9, 1950 and copy of investigation records are submitted and identified as Exhibits A and B.

On June 21, 1950 claimants received formal notice from Car Shop Superintendent Earl Eagleton that they were to be suspended from the service for ten (10) days and this is affirmed by copies of letters they received from Superintendent Eagleton, submitted and identified as Exhibits C and D.

This dispute has been handled in accordance with the current agreement effective June 1, 1939, as subsequently amended, with the highest designated carrier officer to whom such matters are subject to be appealed, with the result that this officer has declined to adjust the dispute.

POSITION OF EMPLOYEES: It is submitted that within the meaning of Rule 31 reading in pertinent part,

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

welders were not instructed to weld plug in to fill hole in hinge bracket, Welder fill holes with plugs on this car.

Were you instructed to apply plugs to hinge brackets?
A. I was not.

Q. Then why did you plug them with slugs?
A. We knew no other purpose for the holes.

Q. You are positive that you were not instructed to weld in the hole.

A. I cannot say that I was not instructed to weld in the hole."

As will be noticed from the transcript of the investigation held on June 14, 1950 (see carrier's Exhibits B and C), there was an attempt on the part of the employees to imply that Claimants Herman and Johnson were being hurried in the performance of their work and that conflicting instructions were issued to them concerning their work. Those implications are entirely without foundation in fact; however, inasmuch as the employees thereby sought to excuse the performance of improper work, their injection of such implications into the case is, in itself, an acknowledgment that their conduct on the date in question in connection with the performance of the work involved was such as to warrant discipline.

Claimants Herman and Johnson were not being harassed by any supervisor. On the contrary, there was no supervisor assigned to the shift being worked by the claimants. Claimants Herman and Johnson received their instructions from Foreman Hagen, assigned to the day shift, before he went off duty at 3:45 P. M., and were trusted to perform their duties in a proper manner without direct and immediate supervision throughout the remainder of their work shift. Attention is hereby directed to the following:

(From carrier's Exhibit C, page 4):

"Q. On this particular job were you instructed to complete the work regardless of whether or not it was done properly?
A. No sir."

Regarding the claimants' implication that conflicting instructions were issued to them, the carrier desires to call attention to the following:

(From carrier's Exhibit B, page 4):

"Q. At any time in the past ten days did anyone outside of your Foreman instruct you as to what you were to do?
A. No one beside Mr. Hagen."

The evidence adduced at the investigation definitely establishes that, on the date in question, Claimants Herman and Johnson disregarded the instructions given them with respect to the manner in which platform hinge brackets were to be welded to the side angles, welding certain brackets in accordance with those instructions and welding others in a different, improper and unsatisfactory manner.

The discipline assessed against the claimants was neither arbitrary nor unreasonable but, on the contrary, was quite lenient.

The contentions of the committee should be dismissed and the claim denied.

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.

This 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 26th day of March, 1951.