

Award No. 1437

Docket No. 1332

2-UP-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. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman Anton S. Strand and Carman Helper Frank L. Honas were unjustly discharged from service July 5, 1949, and that the carrier be ordered to reimburse them for time lost from said date to noon August 19, 1949 and August 23, 1949, respectively.

EMPLOYEES' STATEMENT OF FACTS: Anton S. Strand has been employed as a carman by the carrier since April 23, 1923, and Frank L. Honas as a carman helper since July 9, 1940, at Pocatello, Idaho, and are hereinafter referred to as the claimants. At the time of their discharge, July 5, 1949, Carman Strand was regularly assigned as carman freight from 8:00 A. M. to 4:00 P. M., and Carman Helper Honas was regularly assigned as such from 4:00 P. M. to 12:00 Midnight.

As a result of a report of an inspection made June 11th of a hot box at Minidoka, a point 59 miles from Pocatello, to the effect that the box was "not packed at Pocatello", the claimants were required to submit to question and answer investigations on June 14, 1949, and a copy of each is submitted and identified as Exhibits A and A-1.

On July 5, 1949, the claimants received formal notices from Master Mechanic Nelson that they were discharged from the company's service, copy of each is submitted and identified as Exhibits B and B -1.

Request was duly made upon the carrier that these claimants be reinstated with seniority rights unimpaired and compensated for their wage loss. The carrier subsequently restored these claimants to service, Carman Strand on August 19, and Carman Helper Honas on August 23, 1949, with seniority rights unimpaired but with claim for the wage loss pending until February 14, 1950, when the highest designated carrier officers declined to compensate them for any loss of wages.

The agreement effective May 1, 1948, as subsequently amended, is controlling.

journal boxes must be repacked regardless of whether or not car requires other repairs.

(b) All journal boxes shall be jacked; all journal wedges and bearings removed for examination, and renewed where necessary; all boxes cleaned and repacked with properly prepared packing (new or renovated) in accordance with A.A.R. Standard Practice and car stenciled. Dust guards shall be renewed, when necessary only where wheels, journal boxes or unit side frames are removed. Missing or defective dust guard plugs shall be renewed.

(c) The place, month, day and year of repacking and the railroad or private line reporting marks, must be stenciled on car body near the body bolster at diagonal corners with not less than 1-in. figures and letters, using the same station initial as is used for air-brake stencil. This provision also applies to new cars."

(3) This work was assigned to Carman Anton S. Strand, one of the claimants, and it was his duty to see that the work was properly performed. This caboose departed from Pocatello in X-1560 West on June 9th. Carman Helper Frank L. Honas was assigned to fireman's side of this train on rear end to set down packing and free oil as cars passed over pit in retarder yard, Pocatello.

(4) Caboose 3719 departed Pocatello in X-1560 West, June 9, 1949, however, because of box at location L-1 on this caboose running hot it was necessary to set caboose out at Minidoka, approximately 59 miles west of Pocatello. Examination of this box by train crew and mechanical foreman at Minidoka disclosed no waste or packing in box L-1.

(5) Carman Anton S. Strand and Carman Helper Frank L. Honas were notified on June 13, 1949, of investigation and hearing to be held relative to the inspection and repacking of boxes on UP caboose 3719 which were repacked at Pocatello on June 8, 1949 and departed from Pocatello on Ex-1560 and had to be set out at Minidoka account of hot box L-1. On June 14, 1949, hearings were held before carrier's Supt. of Car Department, W. H. Gould. Copies of stenographic reports of investigations and hearings, which were held on June 14, 1949, are submitted herewith and identified as carrier's Exhibits A and B, respectively.

(6) On July 5, 1949, carrier's Master Mechanic, A. R. Nelson, advised Claimants Strand and Honas that, after having carefully considered the evidence adduced at the hearing, it was shown there was no packing in box L-1 of caboose 3719, and removed Claimants Strand and Honas from the service for their responsibility in connection therewith. (See carrier's Exhibits C and D.) They were returned to service by the carrier as a matter of leniency on August 19 and August 23, 1949, respectively.

POSITION OF CARRIER: Examination of the transcripts of investigations which were conducted with Carman Strand and Carman Helper Honas on June 14, 1949, can leave no doubt as to their responsibility in connection with hot box on caboose 3719, at location L-1, X-1560, at Minidoka, June 9, 1949. Although Claimants Strand and Honas both maintain that box L-1 of caboose 3719 was properly inspected, examined and repacked on repair track and properly inspected and free-oiled in departure yard, it is self-evident that no work of any nature was performed on this box by either. The only reasonable conclusion to be drawn from the facts is that had the work been properly performed in accordance with the claimants' prescribed duties, that box L-1, caboose 3719, would not have run hot within the distance of approximately 59 miles out of Pocatello.

The carrier acted in good faith after careful consideration in imposing discipline which was neither unjust nor unduly severe. The carrier's judgment should not be disturbed.

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.

While the Second Division, as stated in Award 1197, is chary about interfering with discipline where there seems any evidence to support it, in the instant case we are unable to find that there is any evidence worthy of the name to support the discipline here involved; and in such case the imposition of a penalty is arbitrary. The only supposed evidence against the claimants consists in an assertion by the superintendent of the car department, in the course of the investigation, that on arrival of the caboose in question at Minidoka, there was no packing in box L-1. From this circumstance, the carrier reasons that it is conclusive proof: 1. That Claimant Honas, whose duty it was to inspect the caboose before it left Pocatello, had failed to do so; and, 2. That Claimant Strand, whose duty it was to pack the box three days previous, had failed to do so. This statement by the superintendent of the car department was obviously hearsay. No proof of the fact of the box being empty at Minidoka was offered by any witness who discovered it. Indeed, the discoverer was not even identified, and, of course, the accused were accorded no opportunity whatsoever to cross-examine the discoverer to learn in detail the condition of the box, which might have been very material in the controversy. Quite apart, however, from this serious objection to the lack of proper evidence in that respect, the inference or presumption indulged in by the carrier, that the fact of the box being empty at Minidoka, even if properly established, creates even a reasonable presumption that it was not packed at Pocatello—59 miles away in distance and three days in time is certainly unjustified. The connection is not only too remote as a legal proposition but even for reasonable logic. It is notorious that vandals, and others, do on occasion remove waste from car boxes. Claimant Strand testified positively that he had packed the box properly on June 8th. The caboose laid around the yards until midnight on June 10, and finally got out in the early A. M. of June 11th. There is no evidence of whether there were any stops en route between Pocatello and Minidoka. The box may very readily be robbed either in the yard or, if there were any stops, en route.

As to Claimant Honas, while the events are not near so remote in time as they are in the case of Claimant Strand, nevertheless all the other objections apply to the findings against him.

Some stress is laid by the carrier on the fact that at the investigation in the case of Honas, his representative at the conclusion made the statement:

"I feel that the decision of this investigation should be lenient as possible," implying that this plea was an indubitable admission of guilt; such, of, course, is not the case. It is in no sense evidence, and, of course, is intended merely as a plea that in the event the finding should be against the accused on the fact, that leniency would be extended.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March, 1951.