

Award No. 1597

Docket No. 1500

2-Wab-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter 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 under the current agreement Carman Helper W. B. Lamb was unjustly dealt with when he was deprived of his service rights for three (3) actual regularly assigned working days, and that accordingly the Carrier be ordered to reimburse him for time lost and clear their record of any notation made therein.

EMPLOYEES' STATEMENT OF FACTS: W. B. Lamb, hereinafter referred to as the claimant, has been employed as carman helper at Decatur, Illinois since November 3, 1947 with hours of assignment 7:00 A. M. to 12 Noon and 12:30 P. M. to 3:30 P. M. five days per week.

The claimant was required to submit to a question and answer investigation September 11, 1951, on the charges of improper and irregular performance of work while engaged in heating rivets at Lug Spot Steel Plant September 11, 1951, at approximately 8:25 A. M. Copy of investigation record is submitted herewith and identified as Exhibit A.

On September 26, 1951, the claimant received notice from Car Shop Superintendent Earl Eagleton that he would be suspended from service for three (3) actual regularly assigned working days, a copy of which is submitted herewith and identified as Exhibit B. These dates are not mentioned but were September 27, 28, and October 1.

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

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 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.

Claimant was charged with irregular and improper performance of work while engaged in heating rivets. It is contended that claimant, by failing to do his work, burned and destroyed an excessive number of rivets by overheating.

The record of the investigation shows that on September 10, 1951, the car shop superintendent warned the claimant about the waste resulting from the burning of rivets. On September 11, 1951, at approximately 8:25 A. M., claimant destroyed two rivets by overheating. The car shop superintendent was standing near the rivet heater at the time. Claimant says he thought the heater switch was turned off. The car shop superintendent says that claimant left the heater with rivets in it without turning off the switch and that when the car shop superintendent told him that the rivets were burning up, the first thing the claimant did was to cut the current on the heater. Claimant agreed that this was true. Some contention is advanced that the heater was out of order. The evidence does not establish this fact, although claimant says he reported that it was on the day before.

We think there is evidence to support the action of the carrier. Claimant had been warned only the day before about the excessive waste resulting from the burning rivets. The very next morning, in the presence of the car shop superintendent, claimant leaves the vicinity of the rivet heater with rivets in the heater and the current on, resulting in the destruction of two rivets. Some claim is made that claimant had not been properly instructed in the use of the heater. Claimant had seniority as a carman helper as of November 3, 1947. It seems clear to us that if he did not know how to operate the heater after being personally warned about its inefficient use on the day before, there was a duty on his part to so inform the car shop superintendent and not to continue its inefficient operation. Carrier has the prerogative of management to supervise the work in question. When its instructions are not followed, it has the unquestioned right to discipline those who react carelessly or indifferently to such instructions. Without such right, supervision would be meaningless. The discipline was reasonable under the evidence adduced. We are obliged to say that claimant has failed to show by the weight of the evidence that he has been unjustly dealt with or that any provisions of the agreement have been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December, 1952.