

Award No. 1848
Docket No. 1736
2-PRR-URRWA, CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C. I. O.

THE PENNSYLVANIA RAILROAD COMPANY
(Central Region)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the Controlling Agreement, Car Inspectors S. J. Rybareczyk, R. N. Johnson and A. F. Zamborowski were unjustly suspended for a period of thirty days, on March 17, 1953.

2. That, accordingly, the Carrier be ordered to expunge the discipline mark from their records and compensate them for all monetary loss.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties hereto, dated July 1, 1949 and its subsequent amendments, copy of which is on file with the Board and is, by reference hereto, made a part of this statement of facts.

At Buffalo, N. Y., Northern Division, Central Region, The Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs a force of car inspectors.

S. J. Rybareczyk, R. H. Johnson and A. F. Zamborowski, are employed at the seniority point in question as car inspectors and will, hereinafter, be referred to as the claimants.

Car Inspectors S. J. Rybareczyk, R. H. Johnson and A. F. Zamborowski hold regular assignments in that capacity in Gravity Yard, Buffalo Terminal District, working on third trick from 11:00 P. M. to 7:00 A. M.

On Thursday morning, February 21, 1953, at about 2:30 A. M. freight train BEC-2 arriving from Erie pulled past the yard storage tracks in Gravity Yard, moving on the southward main track to a point immediately south of the crossover for the purpose of backing their train across the northward main track and into the storage yard. At this time the conductor reported a brake rigging down on the ninth car from the rear end of the train.

This information was given to the gang foreman in charge of the car inspectors who, in turn, called S. J. Rybareczyk by telephone, informed

way Labor Act provides the recourse that the employe or organization may pursue. The directives of the carrier must, however, be followed. Utter confusion would result if each employe were permitted to determine for himself if directions received were in accord with the collective agreement. A failure to carry out the directions of the carrier, unless they exceed all bounds as to reasonableness, constitutes insubordination. The case against claimant was established by his own admission. He is subject to discipline."

Note also the following appearing in the Findings of Award No. 1548 of the Second Division (Referee Adolph E. Wenke):

"Claimant, under the circumstances disclosed by the record, was required to obey the orders of his superior. He was not at liberty to decide what work his position involved nor to refuse to perform work when directed to do so. Any failure on his part to meet these requirements would make him subject to being disciplined. If any of his rights were transgressed by reason of his obeying the orders given, his relief therefrom was by the method which the parties' effective agreement provides for that purpose."

The same principles also have been enunciated in Second Division Awards Nos. 1543, 1544, 1547 and 1568.

The carrier submits that the record contains substantial evidence to support the charge against the claimants, and in view of the serious nature of the claimants' offense, its action in disciplining them by suspension of thirty (30) days was fully warranted.

Your Honorable Board has held that it may not substitute its judgment for that of the carrier as to the propriety of discipline imposed, where the carrier has not acted arbitrarily, maliciously, or in bad faith. Award No. 1323 of the Second Division (Referee J. Glenn Donaldson) is representative of such holding, as is evidenced by the following:

"* * * it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

The carrier contends that there is ample evidence of record to support the charge against the claimants; that there is no evidence that its action in disciplining the claimants in this case was in any way arbitrary, capricious or in bad faith; and contends that, on the other hand the discipline was only imposed upon the claimants after full and proper trial, and on the basis of undisputed evidence of the claimants' guilt of the offense with which charged.

Therefore, your Honorable Board is respectfully requested to deny the claim in this matter.

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.

The three claimants here involved have been employed as car inspectors in Ebenezer Gravity Yard, Buffalo Terminal District, with tour of duty from 11:00 P. M. to 7:00 A. M. At approximately 2:30 A. M. on Saturday morning, February 21, 1953, freight train BEC-2 arrived at Ebenezer and pulled past the yard storage tracks in Gravity Yard, moving on the southward main track to a point immediately south of the crossover for the purpose of backing

over the crossover and into the storage yard. But before the back-up movement was made, a member of the BEC-2 train crew reported a brake rigging was down on the ninth car from the rear end of the train, thus making it impossible to move the train in.

Upon receiving the trainman's report, the gang foreman in charge of car inspectors telephoned Claimant Rybareczyk and instructed him to proceed to the point where the brake rigging was down and remove it. Rybareczyk refused, whereupon the gang foreman instructed him to request the other two claimants (Johnson and Zamborowski) to perform this task. After speaking with them, Rybareczyk responded that they also refused. The gang foreman subsequently made other arrangements to have this work done, but only after having made an unsuccessful attempt to secure the services of five other car inspectors. Pursuant to trial on the property on the charge of "Refusing to obey a reasonable request of a Supervisor * * *," each of the three claimants was given a 30-day disciplinary suspension. There is no dispute that all three employees refused to obey orders of their superior.

During the progression of this claim, and in oral argument before the Division, the organization advanced three points in defense of claimants' actions: 1) The work to be performed was outside yard limits and therefore outside their (the claimants') jurisdiction; 2) The disciplinary action imposed was discriminatory because the aforementioned five other car inspectors were tried for the same offense but were not disciplined; and 3) The gang foreman's request was in violation of carrier's own safety regulations and would have placed claimants' lives in serious jeopardy.

The first of these defenses is without merit. Even if claimants considered the request improper for the reason given, they should have complied with instructions and subsequently filed a grievance. The sole justifiable exception to this doctrine arises only when a supervisor's instructions are so unreasonable as to endanger life and limb. The second defense must also fall of its own weight. The charge against the other five employees was dismissed because, for reasons which need not be elaborated upon here, carrier found it could not be established they had actually been ordered to perform the work in question. Dismissal of the charge against the other car inspectors under these circumstances did not comprise unfair differential treatment as far as the claimants are concerned.

With respect to the safety phase of this case, the record establishes that at the time of their refusal the claimants did not mention the safety factor. They did not inquire whether adequate safety precautions would be taken in light of the train's position on the main track. Claimants raised the question of safety only after having been formally charged with insubordination, and then indicated only that on the basis of their past observations they had reason to believe sufficient precautions would not be taken. While it must therefore be concluded that fear for their safety was an afterthought, it should be said that the record does not disclose the carrier was unwilling to have the necessary precautionary measures taken, or that it did not have adequate safety equipment available.

In summary, we are compelled to conclude the evidence supports the charge, and that the disciplinary action taken was not arbitrary, capricious or evidentiary of bad faith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1954.