

Award No. 2923

Docket No. 2720

2-MP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Article V, Paragraph 1(a) of the August 21, 1954 Agreement, and accordingly the claim or grievance shall be allowed as presented.
2. That under the current agreement Car Helper-Oiler I. E. Loucks was unjustly dismissed on November 20, 1956, from the service of the Missouri Pacific Railroad Company.
3. That the Missouri Pacific Railroad Company be ordered to reinstate this employe to all service rights with pay for all time lost since November 20, 1956, including vacations earned or that he would have earned.

EMPLOYEES' STATEMENT OF FACTS: Mr. I. E. Loucks, car helper-oiler at Dupo, Illinois, hereinafter referred to as the claimant, entered the service of the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, on September 4, 1952, and has continued in the service of the carrier for approximately five (5) years. The claimant was employed as a car helper in the Dupo, Illinois Yards with duties service treating journal boxes in the train yard.

On October 3, 1956, while spot checking boxes of various cars in the Dupo Train Yard, Master Mechanic M. H. Losch found MON CIL 300 with the packing in the boxes out of place. In checking this car Master Mechanic Losch found the claimant's pool marking and called him back and asked him about the condition of the boxes on this car. The claimant agreed the car was not in shape to run on line of road and spooned the packing back in place.

found guilty of failure to properly perform his duties which resulted in a hot box on car PARX #1160, making it necessary to set the car out at Flinton, although destined for Piedmont, a point beyond Flinton.

4. Although Mr. Loucks was found guilty of failing to properly perform his duties on June 3, 1953, the only discipline administered was a letter reprimand placed on his personal record. Said letter reads as follows:

"Dupo, Ill.—June 15, 1953

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Mr. I. E. Loucks:

I have reviewed investigation papers covering the investigation which was held with you in Master Mechanic's office at 9:30 AM on June 11, 1953, relative to a hot box which happened on PARX 1160 at Flinton in Extra South 1311 out of Dupo on 6-3-53.

I feel sure that you will agree as to your responsibility and to the mishandling prior to the hot box on this car, wherein you did not handle your work properly nor did you confer with your Foreman as you should have. In the hope that the investigation has served its purpose by showing you where you failed I am not taking any disciplinary action against you except that I am placing a copy of this investigation and letter on your personal record file.

I hope that it will not be necessary for me to have to place any more correspondence of this nature on your personal record file.

/s/ M. H. Losch"

For the reasons fully set forth in this submission, there is no basis for the granting of this request, and it should, therefore, be 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 respectfully 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 claims violation of Article V, Paragraph 1(a) of the so-called 1954 Agreement, also that claimant was unjustly dismissed from carrier's service, and asks reinstatement and pay for all time lost, including earned vacation.

Claimant, a car oiler, was dismissed on November 20, 1956, for alleged failure to properly service journal boxes on CIL Car 300, under date of September 26, 1956. Before being dismissed claimant was advised of the charge against him, and that an investigation would be held. A transcript of the testimony at the investigation was made, and is a part of the record.

At the investigation, claimant testified that the car in question was moved and encountered a heavy impact with other cars after being service treated by him. The impact was before the car was examined by the Master Mechanic. Claimant contends the impact caused the condition found by the Master Mechanic. The testimony tends to show that none of eight journal boxes were in condition to be operated in road service. The CIL Car 300 was the only car found by the Master Mechanic during his "routine inspection" to be unfit for road service.

It is apparent that the General Car Foreman and the Master Mechanic were checking the work of the car oilers the night of the occurrence. In his testimony, General Car Foreman Warren stated: "Mr. Losch (Master Mechanic) and myself went out in the train yard and checked on inspection of cars on service treating of journal boxes on outbound trains. We had inspected many journal boxes on 1/67 on track eight in Yard F in fact we checked behind the entire oiling force that was on duty at that time. Coming down 67 we came up to this CIL #300, I was somewhat ahead of Mr. Losch on the West Side and he called me back and asked what I thought about the journal boxes on this particular car. I looked at them and they were pretty rough and told him that car would have to be re-worked before train departed." It is noted by Warren's statement that he had already passed CIL 300 without taking exception, when the Master Mechanic called him back. The Master Mechanic testified that "on September 26, 1956, (the same date as that on which the dismissal charge was made), he instructed the General Car foreman and the three yard foremen to confer with every car oiler or service treater in the Dupo Train Yard working under them and on their shift and asked them if they were familiar and knew the proper manner in which to service journal boxes and to tell them if they did not know to tell them that the Foreman would instruct them, and for them to make a record of the men that they talked to on this subject."

Again referring to Mr. Warren's testimony, he stated: "A day prior to this instance I went down in the yards and had all the oilers assembled in locker room in Yard A prior to them going to work in the yard service treating of boxes owing to the fact that we had a blow-up in hot boxes a few days before."

The record discloses that the Master Mechanic, General Foreman and the Yard Foreman were all at the scene while claimant service treated the car, after its condition was discovered by the Master Mechanic.

Carrier argues that claimant did not mention, as later claimed by him, that the car in question was subjected to rough handling. Nothing in the record indicates that he attempted to offer any alibi or to defend his actions in any way. At the time he was surrounded by the General Car Foreman, Master Mechanic and Yard Foreman, and he was engaged in service treating the eight journal boxes. There is nothing in the record to indicate that claimant was responsible for the condition of car journals after once inspected and service treated, if necessary. The undisputed evidence is that the car was moved after he placed his "pool" mark on it. Claimant testified that the car was struck by a "cut of" six cars at a speed of approximately eight miles per hour, and that he made a comment to another service treater regarding the impact.

This referee well knows the hazard created by faulty inspection of locomotives and cars, and of the potential result of a burned off journal, and is well aware of the responsibilities of railroad operating officers, and of the discipline necessary to maintain safety.

The discipline to be assessed for malfeasance or for violation of the rules rests with the carrier. Such disciplinary action, however, may not be arbitrary, capricious, or of bad faith, that would indicate overzealous action. Before a carrier resorts to the extreme penalty of dismissal, it should endeavor to secure all the facts and collect the best evidence available.

In this case, it is significant that all eight journal boxes on the car in question were in need of service treating when found by the Master Mechanic. Claimant gave his opinion as to the cause. The statement made by him, as he claimed, to the other service treater could and should have been challenged. The other service treater was not questioned at the investigation.

It is evident from the record that the work of the service treaters that night was being carefully checked by Master Mechanic and the General Car Foreman. The day before, according to the testimony of the General Car Foreman, "there had been a blow-up in hot boxes."

Investigations such as was held are for the purpose of ascertaining all the facts, not to prove the guilt of the accused. It must be fair and impartial. It is not sufficient that the accused be notified of the precise charge, and that he be advised of his rights. The officer conducting the investigation is charged with the responsibility of developing all the facts and the circumstances surrounding them. The judicial officer must make his decision based on all the relevant evidence, and any extenuating circumstances. Otherwise, the investigation would be a mockery and likely a miscarriage of justice would result. We do not find in the record that claimant was obligated to recheck a "cut of cars" after other cars made contact with them, even at an excessive rate of speed. There is no evidence in the record that the CIL car journal boxes were not properly serviced by claimant at the time he placed his "pool" mark thereon.

Based upon the whole record, we must come to the conclusion that the discipline of dismissal was a disregard of logic or based upon preconceived judgment.

Claimant should be reinstated with his seniority rights unimpaired, and compensated for all wages lost, if any, dating from November 20, 1956 until he is reinstated, less what he may have earned in outside employment. To clarify Claim No. 3 claimant is entitled to any pay in lieu of vacation he may have qualified for during the year 1956, such pay shall also be allowed.

The award herein makes it unnecessary to rule on Claim No. 1.

AWARD

Claims Nos. 2 and 3 sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.