

Award No. 3082

Docket No. 2775

2-CUT-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman T. B. McGuire was unjustly suspended from the service on October 5, 1956.
2. That accordingly the Carrier be ordered to pay this employe for all time lost.

EMPLOYEES' STATEMENT OF FACTS: T. B. McGuire hereinafter referred to as the claimant, was employed by the Cincinnati Union Terminal Company hereinafter referred to as the carrier, as a carman on October 25, 1949 and is regularly employed as such.

Claimant's assigned hours of service are 11:00 P.M. to 7:00 A.M. Thursday through Monday, with rest days of Tuesday and Wednesday.

On October 5, 1956 claimant was asked by carrier's gang foreman to work overtime in the station sector. The carrier's general car foreman suspended the claimant from the service of the carrier at approximately 7:05 A.M. for failing to inspect tender boxes on B&O engine 5301. Notice to appear for a hearing was mailed to claimant's home address by carrier's general car foreman submitted herewith and identified as Exhibit A. The investigation of the charges against the claimant were conducted by Mr. W. C. Patten, assistant master mechanic under date of October 9, 1956 and a copy of the transcript of the investigation is submitted herewith and identified as Exhibit B. Mr. Patten further suspended the claimant "pending results of this investigation", shown on page 14, Exhibit B.

The carrier's master mechanic under the date of October 11, 1956, notified the claimant by U. S. mail to report for his regular assignment October 12, 1956, copy submitted herewith and identified as Exhibit C. Claimant did report

Two supervisors testified they had personally instructed claimant McGuire to inspect the tank boxes on through B&O R.R. locomotives. On being asked by General Car Foreman Daniels why he did not inspect the boxes he replied he did not think he had the time, then on meeting Mr. Daniels in depot office he claimed he had never been instructed by anyone. During the investigation he admitted he had told Mr. Daniels he did not think he had the time to inspect the tank boxes. Here we have a car inspector refusing to follow instructions to inspect tank boxes on a through locomotive and by his failure to do so could have caused a hot box and a burned off journal and possibly a very serious wreck of a fast passenger train.

The suspension included the days he was out of service pending investigation and "certified letter" was received by claimant's son Jerry and certainly was of enough importance to see that his father was promptly notified. Claimant McGuire did not return to duty until October 14, 1956, thereby losing seven (7) days instead of five, this after letter was delivered to his home October 12, 1956.

Claimant was found guilty as charged and carrier respectfully requests the Second Division to deny claim in its entirety.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was suspended October 5, 1956 without prior hearing, for failure to inspect tender boxes on B&O engine 5301.

Investigation was held October 9th. Claimant was given a five day suspension covering the following days: October 5, 6, 7, 8 and 11, 1956.

On October 11, he was notified to report for work on October 12th.

He reported back to work on October 14, 1956.

Claim is made for all time lost.

The record discloses that the failure of the claimant to work and to be paid for October 12 and 13 was not the fault of the carrier.

As to the five day suspension, it is undisputed that claimant failed to inspect tender boxes on B&O engine 5301 on the day in question. That is admitted by claimant as shown on page 4 of Exhibit B.

According to witnesses at the investigation, claimant said "he was in a big hurry and did not make this inspection of the tender boxes".

From the entire record in this case we cannot find that the carrier acted arbitrarily or in bad faith in suspending the claimant for five days.

As to the suspension, prior to investigation it should be noted that the days lost because of this are the same days that the claimant lost by reason of carrier's action after investigation was held.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.