

**Award No. 3092**

**Docket No. 2871**

**2-L&N-CM-'59**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Agreement Carman Helper W. D. Bachus was unjustly dismissed from the service at the close of his shift on April 25, 1957, and

2. Accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** Carman Helper W. D. Bachus, hereinafter referred to as the claimant, was first employed by the carrier as carman helper on September 25, 1940 and worked in this capacity until the close of his shift on April 25, 1957.

The claimant received a letter from the carrier's master mechanic dated March 18, 1957 wherein he was charged with the responsibility of not properly performing his duties and causing delay to Cain Creek Extra 410 called for 7:30 P.M., March 14, 1957. The letter of charges is submitted herewith, identified as employes' Exhibit A.

On March 22, an investigation was held regarding charges placed against the claimant, in the office of the master mechanic (Boyles) Birmingham, Alabama. A copy of the transcript is submitted herewith and identified as employes' Exhibit B.

Under date of April 25, 1957, the claimant received notice of dismissal from the carrier's master mechanic. Copy of that notice is submitted herewith, identified as employes' Exhibit C.

In conclusion, carrier reiterates that Carman Helper Bachus was guilty of the serious charges against him and in view of the nature of the offense, and his prior record, his dismissal was fully justified and should not be disturbed. In this connection, attention is invited to the following excerpts from previous awards of this Division:

“\* \* \* This Board is loathe to interfere in cases of discipline if there is any reasonable ground on which it can be justified.” (Second Division Award 1109.)

“\* \* \* 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.” (Second Division Award 1323.)

**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.

The claimant complains that he was unjustly dismissed from the service and he is seeking reinstatement with seniority rights unimpaired and with compensation for time lost. He was charged with the responsibility of not properly performing his duties, causing delay to Cain Creek Extra 410, March 14, 1957. There is ample evidence in the record that the claimant delayed the train by not properly performing his duties. In addition to the testimony of disinterested witnesses, the claimant himself admits that after the train was made up he did not inspect it until after Inspector Miller had called his attention to the fact that the doors were not properly latched. We find on Page 16 of Exhibit B,

“Q. This Cain Creek was made up at 8:00 P.M. Did you go over the train after it was made up.

A. Yes sir.

Q. Was this before or after Mr. Miller had called your attention to the doors that were not properly latched.

A. It was after.”

The claimant's duty was to wind doors after the train was made up.

Was the penalty of dismissal justified? We think the language contained in Award 1692 of this Division is persuasive.

"The question then remains, was the penalty imposed excessive? This and other Divisions of the Board have often said that they would not substitute their judgment for that of the carrier unless its action in that respect can be said to be arbitrary, unreasonable, or unjust."

The claim must be denied.

**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.