

Award No. 3267

Docket No. 3092

2-L&N-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1—That the Carrier's dismissal of Carman Helper W. C. Collins effective November 19, 1957 was not authorized by the current agreement.

2—That accordingly the Carriers be ordered to restore Carman Helper Collins to service with all seniority rights unimpaired and compensate him for all time lost subsequent to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper W. C. Collins, hereinafter referred to as the claimant, was working in the capacity of (upgraded helper) carman on the third shift, 11 P. M. to 7 A. M. in the carrier's train yards at Hazard, Kentucky on August 21, 1957.

The claimant holds seniority as carman helper at Dent, Kentucky as of April 10, 1951 having been subsequently transferred to Hazard in the capacity of an upgraded employe on October 8, 1955.

Under date of September 6, 1957 the carrier's assistant trainmaster wrote the claimant charging him with "refusing and failing to carry out instructions given by a proper superior, . . ." a copy of which is submitted herewith and identified as Exhibit A, with investigation scheduled for September 11, 1957.

The investigation was delayed by mutual agreement and finally held in the trainmaster's office at Hazard, Kentucky on October 16, 1957. A

“ . . . Our function in cases of the kind here involved, as we understand it, under Awards of this Division of the Board so well known and established that they require no citation or further consideration, is not to pass upon the credibility of the witnesses or weigh the evidence but to determine whether the evidence is substantial and supports the charges as made. If it is we cannot substitute our judgment for that of the carrier and it is our duty to leave its findings undisturbed unless it is apparent its action is so clearly wrong as to amount to an abuse of discretion.” (Third Division Award 5401.)

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 is charged with “refusing and failing to carry out instructions given by a proper superior * * *”, on the morning of August 21, 1957.

Claimant says that the occurrence asserted did not occur on the 21st of August and that the record fails to reveal in any manner he failed or refused to carry out instructions.

The variance as to the date between that alleged and the proof, if established, which we do not find, is not material as the event upon which the charge is predicated is not in dispute. A car carrying coal was spilling its contents from one of its doors which was partially open.

Mr. Collins, a Car Inspector, upon observation of the car placed a shop tag on it. A Lead Car Inspector, on investigation, concluded that the door could be closed where the car stood and a Yardmaster directed Collins and another Carman to assist in the operation.

The attitude of Mr. Collins was obstructive to the purpose to close the door of the car as proposed by the Yardmaster, and he was resentful that his judgment, that it should be shopped, had been disregarded.

This attitude is found from the composite testimony of Yardmaster Sheegog and Car Inspectors Combs, Quillen and Surer.

There is no dispute that Collins did not help although there is some testimony that he was willing to do so.

The Carrier has the primary right to weigh and evaluate the testimony, and if its finding is reasonably supported, this Division is loathe to disturb that finding. Awards 1109 and 2207.

In view of the attitude of Mr. Collins and the fact that he had been twice before disciplined by his company, once for disobedience of an order,

and upon the testimony supporting the charges, we cannot hold that the finding of the Carrier or the discharge of Mr. Collins was not justified.

AWARD

Claim denied.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1959.