

Award No. 3312

Docket No. 3132

2-RDG-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Car Inspector John Phillips was unjustly dealt with by the Carrier in suspending him from service for thirty actual working days from April 29th through and including June 10th, 1957.

2. Accordingly, the Carrier be ordered to compensate Car Inspector Phillips for thirty days lost time at pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: John Phillips, hereinafter referred to as the claimant, is employed by the Reading Company, hereinafter referred to as the carrier, as a car inspector. Claimant entered the service of the carrier, as a car inspector, on April 11, 1923. In the year 1945 the claimant was assigned to the West Trenton, New Jersey, car inspector position, which included the area of Bethayres to Hamilton, West Trenton, and Trenton on the 8:00 A.M. to 5:00 P.M. shift, with one (1) hour for lunch, Monday through Friday with Saturday and Sunday as rest days.

On March 25, 1957, General Car Inspector H. O. Ludwig, directed a letter, copy submitted herewith and identified as Exhibit A, to the claimant citing him:

‘for hearing and investigation in connection with absenting yourself from duty without permission and falsifying time cards during the period March 1, 1957, through March 23, 1957.’

to be held at 10:00 A.M., Wednesday, March 27, 1957, Room 312, Reading Terminal, Philadelphia, Pennsylvania.

tered in such manner that will bring about the enforcement of effective rules and regulations in order to insure proper, efficient and safe operation. Carrier maintains that the record does not contain any evidence and there are no mitigating circumstances that merit special consideration or any change in the discipline assessed. Carrier, therefore, requests that the claim as submitted to the Board be denied 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.

Following a hearing held on the property, claimant was assessed discipline of 30 days' actual suspension, commencing April 29, 1957, on the stated grounds of "failure to work assigned tour of duty at the regular starting time, falsifying time cards during the period March 1 through March 23, 1957, and improper inspection of cars received in interchange."

In addition to contending the evidence does not justify the assessment of discipline against claimant, the Organization asserts the penalty should be revoked because: (1) Carrier improperly enlarged and revised the charge preferred against claimant; and (2) Management violated Article V, Section 1(a) of the August 21, 1954 Agreement, since the supervisor who rendered decision on the resulting claim at initial step failed to set forth in writing the reasons for his denial thereof. Carrier contends no fatal procedural defect occurred and that there is ample justification in the record for the penalty assessed.

We do not find that fatal error was made by Carrier on the first of the procedural contentions raised. With respect to the second of these contentions, it is beyond dispute that in rendering decision on the claim as originally filed the Foreman involved gave no reasons for the denial in his letter to the Local Chairman who had submitted the claim. Carrier asserts that in effect the General Chairman was notified of the reasons for the Foreman's decision since he was subsequently given a copy of the suspension notice issued to the claimant. This notice contained the above-quoted basis for the suspension and apparently was supplied by the Local Chairman on June 7, 1957 in response to the latter's request. Carrier asserts that in this manner the Local Chairman was given the reasons for the Foreman's denial within 60 days from the filing of the claim on May 19, 1957. The events just cited do not show that the Local Chairman was given the reasons for the Foreman's denial at any time, however. All that was done was to subsequently provide him with the reasons for the suspension as stated in the discipline notice which precipitated the claim.

In view of the foregoing, it must be held that Carrier failed to comply with the procedural requirements of Article V, Section 1(a) of the August 21, 1954 Agreement to which these parties are signatory. That provision states that if the individual filing the claim is not notified as prescribed therein, "the claim or grievance shall be allowed as presented, but this shall

not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances." In view of the clear mandate of this provision, we have no alternative but to sustain this claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1959.