

Award No. 3430
Docket No. 3191
2-StLSW-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That Car Inspector H. L. Davis was unjustly dismissed from the service on September 20, 1957 and that accordingly the Carrier be ordered to reinstate him to all service rights including vacation rights with compensation for all wage losses retroactive to aforesaid date in accordance with the current agreement.

EMPLOYEES' STATEMENT OF FACTS: The St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, employed H. L. Davis, hereinafter referred to as the claimant, at Pine Bluff, Arkansas, on November 4, 1942, as a carman helper. He was subsequently promoted to a mechanic on a temporary basis, and after serving the required accumulated time in that capacity was given seniority as car inspector on October 5, 1950, and on January 17, 1951, established seniority in subdivision of freight carman on the repair track.

On the night of September 4, 1957, there were five regularly assigned car inspectors working on the third shift, 11:00 P. M. to 7:00 A. M., in the Pine Bluff Yard, one of whom was the claimant whose regular assigned rest days were Friday and Saturday. On the morning of September 5, after 3:00 A. M., assistant general car foreman, Mr. T. A. Johnson and inspector foreman, Mr. M. K. Vaught made an inspection of the Pine Bluff Yard, and found claimant and Car Inspector J. C. Clement in the switchman's shanty in the south end of the yard, where they had retreated for a brief relief from the mosquitoes, which were making working conditions in all parts of the yard unbearable during that period. They were waiting here as had long been the practice, until the switchmen finished switching the cuts of cars they were to work. After inspecting a cut of cars with these two employes, the foremen supervised repairs to three cars in the cut, and then continued their inspection, locating only one of the remaining three

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In conclusion the carrier respectfully submits that the facts in evidence show that dismissal was justified, and that there are no grounds for reinstatement on any basis. Carrier respectfully requests that claim 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 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.

Mr. H. L. Davis was employed by the carrier as a car Inspector, at Pine Bluff, Arkansas. The Organization contends that he was unjustly dismissed on September 20, 1957.

The evidence shows that Claimant and Car Inspector Clement were cited for investigation and discharged for violation of the company's rules and failing to properly perform their tour of duty. Car Inspector Clement was subsequently reinstated, by agreement of the carrier and the Organization on a leniency basis with seniority and vacation rights restored, but without pay for time lost.

The Organization contends that claimant and his companion (Mr. Clement) were singled out for discipline by the two foremen who were making the inspection of the yard, as the foremen made no visible or admitted attempt to locate the other two Car Inspectors on this shift, and also that the other Car Inspector found in the north switchman's shanty in a reclining position was not cited for investigation in spite of the fact that he also had not properly performed his duties in the yard. It is their contention that the carrier has imposed an abusive and arbitrary exercise of its disciplinary powers.

The evidence shows that Mr. Davis had not performed his duty of inspecting and making repairs and was sleeping on the job. Although he disputes this testimony and states that he had only been there for a matter of ten minutes, while he was waiting for the yard engine to switch the cars, the two foremen testified that the yard engine had done no switching for the previous hour and the cars had been sitting in location for one hour or better. They also testified that they had the switchmen's shanty under observation and had not seen these Inspectors during the previous hour. Foreman Vaught testified that there were no cars south of the scale track that would obstruct his view of the switchmen's shanty when they were observing same.

The two foremen deny any intent to discriminate. They were checking on the performance of the Car Inspectors. They would be unable to check the entire yard from the one location. They were able to observe the south end of the yard from the scale house so they observed it and the switchmen's shanty for one hour, and saw no activity in that section of the yard, so they went to the shanty and found the inspectors in a reclining position. Follow-

ing this they took them into the yard and showed them the work that they had been neglecting.

True they then went to the North end of the yard and found one inspector in the shanty, who stated that he had been there only a few minutes awaiting a train which was then approaching. When the train stopped all of the inspectors appeared to work the train. No charges were made against these other inspectors because such checking as the foremen had the opportunity to do, did not disclose any evidence of rule violation.

We do not feel that this Board should substitute its judgment for that of the carrier unless the evidence proves that the carrier assessed an unjust or discriminatory penalty. The evidence here does not support such a contention.

The carrier has a right to expect its employes to observe the Rules and perform their work. Likewise when the carrier is assessing penalties they should take into consideration the entire service record of the employe, which could be their reason for the reinstatement of Mr. Clement. This discretion is vested in them and we may not set aside their judgment unless the evidence proves that they have abused this right. The record in this case does not so indicate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1960.