

**Award No. 3693**

**Docket No. 3582**

**2-RDG-CM-'61**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

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

**READING COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That Car Inspector John G. Sulzer was unjustly dealt with by the Carrier in suspending him from service for thirty actual working days from August 3 through and including September 13, 1958.

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

**EMPLOYES' STATEMENT OF FACTS:** John C. Sulzer, 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 repairer helper at Rutherford Yards, Pennsylvania, March 23, 1952. Was advanced to car inspector August 25, 1952, at which position he was working at time disciplined 30 days, actual working days.

On July 25, 1958, Car Inspector Sulzer was given hearing and investigation. At this hearing and investigation, the claimant was charged with the following:

"... you are hereby notified to present yourself for hearing and investigation in connection with failure to note eastward movement of east end engine 726-724 at time of throwing switch and locking switch No. 5, East Departure Yard, resulting in derailling engine 726 and sideswiping fourteen cars, July 24, 1958, at Rutherford, Pa., to determine your responsibility, if any, in this matter."

Under date of July 31, 1958, General Foreman Rothermel wrote the claimant, advising him that he was suspended for thirty (30) actual working days, commencing August 3, 1958:

In handling the instant claim on the property, the organization contended that the discipline assessed was unjust and too severe. Carrier does not concur or agree with the contention and maintains the careless action of claimant clearly merited discipline.

This is a discipline case wherein the carmen of System Federation No. 109 request the Second Division of the National Railroad Adjustment Board to set aside the considered judgment of the officers of the carrier, who are responsible for the proper and efficient operation of the railroad and who passed on the evidence and approved the discipline in this case, and substitute therefor the judgment of the Carmen's Brotherhood.

Carrier submits, and the Board has so held, that the assessment of discipline is a matter within the discretion of the carrier. In the instant case there was no abuse of discretion in the suspension of Car Inspector Sulzer. Such action was warranted and justified, and the discipline was not assessed arbitrarily, capriciously or without just cause and your Board has previously held that where the carrier has not acted arbitrarily, unreasonably or without just cause, the judgment of the Board would not be substituted for that of the carrier. It was the considered judgment of carrier officers responsible for the safe, efficient and economical operation of the railroad that, in view of the seriousness of claimant's offense in the instant case a suspension of 30 days was warranted and justified.

Under the factual evidence presented hereinbefore, it is the carrier's position that claimant was afforded a fair hearing in accordance with the requirements of Rule 34 of the shop crafts agreement. The record supports carrier's finding that claimant carelessness was the primary cause of the sideswipe in Rutherford Yard, in view of which carrier maintains his suspension was warranted and justified. The propriety of the discipline should not be questioned by the Board, as it was not assessed arbitrarily or without just cause. Furthermore, it must be recognized that it is necessary that discipline be administered in such manner that will bring about and 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 employees involved in this dispute are respectively carrier and employe within this 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.

After a hearing Claimant was suspended "Account failure to observe the movement of Engine 726 with draft of 59 cars and throwing switch ahead of engine, causing Engine 726 to sideswipe 14 cars in draft of Engine 800 at Rutherford Yard, July 24, 1958."

The Position of the Employees is that:

"An unbiased examination of the hearing record will reveal that it contains nothing of so serious a nature as to warrant a discipline so unjust and severe as 30 actual working days."

Claimant testified that he threw the switch without looking to see whether a train was approaching. As a result a diesel unit was derailed and fourteen freight cars were damaged, resulting in a cost to the Carrier of \$7770.00. There is some conflict in the evidence whether, when Claimant threw the switch the train was already in motion, or whether it had for some reason stopped but had started again. However Claimant's failure to look before throwing the switch resulted in the wreck, and in view of the amount of damage done and the fact that it could have been much greater and might even have occasioned physical injury or loss of life to other employees, thirty working days' suspension cannot be considered an unduly severe or unjust penalty.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1961.