

Award No. 3937
Docket No. 3780
2-P&LE-TWUOA-'62

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.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, A. F. of L. - C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: Car Inspector Notary was disqualified by the carrier as to doing passenger car inspection work. The organization feels that this disqualification was improper and requests that he be re-instated and be allowed to perform passenger work as he has always done. Also when car inspector Notary was disqualified he was removed from his passenger car position. On this position he was able to get overtime work. The organization requests that Car Inspector Notary be paid all overtime that he should have earned on the passenger car position up to the time he is re-instated and allowed to do passenger car work.

EMPLOYEES' STATEMENT OF FACTS: This case arose at Youngstown,, Ohio and is known as Case Y-123.

That the carrier nowhere in the investigation proved that car inspector Notary was the employe that held the hose and put water in the fuel tank.

That the president of the local had asked the carrier to go and try to put the water hose in the fuel tank and the carrier stated this was a good idea but would not do so.

That according to the sketch made of both the water connection and the fuel connection it is not possible to put the water connection on the fuel connection unless it would be held there by an individual.

That when car inspector Notary bid the passenger car inspection position and was awarded said position, nothing was stated on said bid that he was to water the engines but he did receive instruction from Mr. O'Donnell of train service as to what he was to do as far as watering diesels was concerned.

That the water connection would have to be secured in place to allow the employe to go to the boiler room which is at least a hundred feet away to

Carrier urges that the claim be denied or dismissed 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.

Prior to the detailed investigation the Carrier took Claimant's statement, and afterward held another investigation to question him again at length. His testimony on all three occasions was consistent and credible; but it was contradicted by two other witnesses whose testimony was equally so. The carrier made an unusual effort to learn the truth; this Division has no better way to determine the facts or the relative credibility of witnesses, and is not in position to do so or to decide that the Claimant should have been believed instead of the other two witnesses.

The objection is raised that the Carrier made no test to determine whether the water hose could have been connected to the fuel tank as claimant testified. But its officer stated that it was possible and the record showed that it was actually done; the only question was by whom.

There is no indication of prior complaint or discipline of claimant. The record establishes without question that he had been an inspector for 36 years, that he had been on this particular passenger car inspector's work for six months, and that if he had attached the water hose to the diesel engine on this occasion it was the only time he had ever done so, a member of the engine crew having made the attachment on all prior occasions.

Such an error committed upon an employe's first performance of a certain operation undoubtedly merits some discipline, but it does not indicate utter incompetence to perform that act or passenger car inspection in general. It is hardly possible that his reinstatement would result in similar errors.

Consequently it seems clear that his permanent disqualification for that work is excessive discipline for the incident, that his disqualification for nearly two years should be sufficient discipline and that he should now be reinstated and permitted to perform passenger car inspection as before.

AWARD

Claim sustained to the extent indicated by the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1962.