

Award No. 4035
Docket No. 3798
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 the 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 EMPLOYES: On June 3, 1959 Car Inspectors Hanlon and Hart received notices stating that they were given five (5) days suspended sentence for failure to release hand brakes on cars from Mahoning State line on May 13, 1959. The notice also states that in the event of any further violation or infraction of any rules on the part of these men before May 4, 1960 that these men will be required to serve this sentence. The organization feels that this sentence is improper as these men were not given proper protection to release hand brakes. The organization feels that the carrier was not abiding with Rule 36 of the present agreement. The organization requests that the carrier rescind the sentence given these two men.

EMPLOYEES' STATEMENT OF FACTS: This case was handled on the property of the carrier and is known as Case Y-128.

That master mechanic-car in his answer to the organization stated that he could not see any reason for the employees to use blue flags when releasing hand brakes, yet Rule 36 states that when work is being done on cars blue flags will be used.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company covering Carmen, their Helpers and Apprentices (Car & Locomotive Departments).

POSITION OF EMPLOYES: That it is improper for the carrier to require employees to perform work without blue flag protection when we do have a rule that calls for protection of employees working on cars.

That at the investigation the carrier did not prove that the brakes were on the cars as stated by the carrier and it is possible that the brakes were set by the train crew after the inspectors had inspected the cars.

The assessment of discipline is a prerogative of management and every Division of the National Railroad Adjustment Board has consistently refused to substitute its judgment for that of the carrier and has refused to interfere in any way with a carrier's disciplinary action provided the action taken was not without cause and was not in bad faith. Excerpts from a few awards of the Second Division in connection with this principle are set forth below:

AWARD NO. 1109: — SECOND DIVISION

“* * * This Board is loathe to interfere in cases of discipline if there is any reasonable ground on which it can be justified.”

AWARD NO. 1323: — SECOND DIVISION

“* * * it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed.”

CONCLUSION: The carrier has conclusively shown that Claimants Hanlon and Hart were found guilty of the charge presented against them and were properly disciplined for their failure to fulfill the responsibilities of their positions as car inspectors. In view of the nature of the offense the disciplinary action taken by the carrier was most lenient and did not exceed the limits of sound managerial discretion.

Awards of the Second Division, National Railroad Adjustment Board have been cited in support of carrier's position.

Carrier submits that the request for removal of discipline from the records of the claimants is without merit and should 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.

On June 3, 1959, Claimants were given five days' deferred suspended sentence for failure to release hand brakes on May 13, 1959, with the proviso that the suspension would be placed in effect in the event of further violation or rule infraction before May 4, 1960. That period having passed without such charge, the only effect of a rescission of the discipline would be to remove the matter from Claimants' service records.

The Position of Employes is: First, that the carrier cannot properly require the performance of this work without blue flag protection; and second, that it was improper to prefer two charges against these employes in one notice of hearing.

As for the latter objection, the Agreement contains no requirement for separate notices of violations claimed, but provides only that the employe will be apprised in writing of the charge against him. The additional charge is not claimed or shown to have prejudiced Claimants in any way; it was their failure to report a drop car open, which was included in the notice and in the heading of the hearing record, but was not mentioned in either the investigation or the suspension order. No objection was made at the hearing, and at its conclusion both Claimants conceded that it had been conducted in a fair and proper manner in accordance with the Agreement. Consequently, even if the Agreement had been violated and Claimants' interests thereby in some way affected, the objection would have been waived. 2

The question of blue flag protection is not shown to have been raised at the hearing, and in any event would have been irrelevant. It might have become material if Claimants had admitted the non-performance of their duties and sought to excuse it because of blue flag protection required by the Agreement and requested but denied them. 4

But Claimants' testimony was that they had fully performed their work, without any attempt to excuse a default because of the lack of protection.

The claim is not sustained by the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1962.