



Award No. 4911

Docket No. 4848

2-NYC-CM-'66

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:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

THE NEW YORK CENTRAL RAILROAD (Eastern District)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Sam Roth was unjustly dismissed from service of the Carrier April 9, 1964.

2. That accordingly the Carrier shall be ordered to compensate aforesaid employe for all time lost from April 9, 1964 until he is restored to service, with seniority unimpaired.

3. That accordingly the Carrier shall be ordered to compensate the aforesaid employe for all fringe benefits, Hospitalization (Surgical and Medical), Life Insurance, Vacation, Holiday and any other Fringe Benefits now in effect or subsequently contracted.

EMPLOYERS' STATEMENT OF FACTS: Carman Sam Roth hereinafter referred to as the claimant, is employed by the New York Central Railroad, hereinafter referred to as the carrier, at Rochester, New York Passenger Depot and Freight Yards. The claimant entered the service of the carrier approximately 20 years prior to his dismissal. The claimant worked as a carman for approximately 18 years.

On December 17, 1963 the claimant was working the 4:00 P.M. to 12:00 Midnight Shift, in the Freight Yards. When the claimant reported for duty on December 17, 1963 he was told by the carmen, particularly Mr. E. Carr, that a car was to be added to Train No. 123 and that he was to go to the passenger station to uncouple the steam, air and signal hoses and cut off the diesel engines from mail and express train no. 123. The claimant called Mr. Lawson, clerk-checkman and he said that train no. 123 was to pick up a mail car N.Y.C. 9800 Flexivan car to be placed on the head end of the train and it would require the services of a carman to uncouple, cut off and couple the steam, air and signal hoses and test brakes.

The claimant proceeded to the passenger station from the freight yard and when he arrived the train was on track No. 5. The claimant walked on the platform to the head end of the train. The claimant crossed over the end sill

CONCLUSION: The foregoing record indicates that the claimant failed to take the required precautionary measures to protect his safety. Such disregard for his own safety is sufficient reason to discontinue his employment.

The carrier submits that the discipline was neither unjust nor unduly severe, and respectfully requests this Board to so rule.

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.

Claimant was instructed to uncouple the steam, air and signal hoses and cut off the diesel engines from Mail and Express Train No. 123 at Rochester so that a mail car could be added to the head end.

After the train had arrived it was found that the mail car was not ready to be picked up, but Claimant was not so informed. He proceeded to the head end of the train, which was unusually long, and was on the front end of the first car when the train started. On account of street overpasses he was unable to step off, and he could not get the attention of either the engineer or the fireman; he was therefore carried to Buffalo.

The charge was that he had violated the Carrier's Safety Rules 4003, 4009 and 4032, and its Operating Rule 26, which are as follows:

Safety Rule 4003:

"The necessity for care must be kept in mind at all times as the rules contained herein may not cover all practices essential to safety."

Safety Rule 4009:

"They must not pass between cars that are standing close together on the same track without first making sure it is safe to do so."

Safety Rule 4032:

"Employes must be on the lookout for their own safety and must not depend upon foremen or other persons to warn them of approach of trains or cars. In places where clear view cannot be obtained, extra precaution must be taken."

Operating Rule 26:

"A blue signal, displayed at one or both ends of an engine, car or train, indicates that workmen are under or about it; when thus protected it must not be coupled to or moved. Each class of workmen

will display the blue signals and the same workmen are alone authorized to remove them. Other equipment must not be placed on the same track so as to intercept the view of the blue signals, without first notifying the workmen.

When emergency repair work is to be done under or about cars in a train and blue signal is not available, the engineman and firemen will be notified and protection must be given those engaged in making the repairs.

Enginemen must not prepare self-propelled equipment for service if such equipment is protected by blue signal (or tag), without permission from workman by whom signal was displayed."

None of these rules is shown to have been violated by Claimant. Safety Rule 4003 emphasizes that the necessity for care must always be kept in mind, but this does not suggest that the should first have contacted the engineer to make sure that their orders concerning the mail car coincided and had not been changed without notice to Claimant.

Claims 1 and 2 must therefore be sustained, in accordance with Rule 39, which requires that Claimant be compensated for his net wage loss, if any. Claim 3 should be sustained as to vacation rights but otherwise denied.

AWARD

Claim sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.