

Award No. 5301
Docket No. 5077
2-WT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold W. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYEES
DEPARTMENT, AFL-CIO (Carmen)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Car Repairman, Joseph Figliozi, was unjustly dealt with when on March 24, 1965 he was removed from the service of the Washington Terminal Company and on April 21, 1965 assessed with a thirty (30) day suspension from service.

2. That accordingly the Carrier be ordered to compensate Car Repairman, Joseph Figliozi for all time lost as the result of the thirty (30) days suspension from service.

EMPLOYEES' STATEMENT OF FACTS: Carman, Joseph Figliozi hereinafter referred to as the Claimant is employed as Car Repairman on the 7:00 A.M. to 3:00 P.M. shift, Union Station, Washington Terminal Co. hereinafter referred to as the Carrier. At approximately 2:37 P.M. March 24, 1965 the Claimant was removed from the service of the Carrier by the Carrier's Car Foreman, Mr. J. C. McPhearson. On March 25, 1965 the Claimant was formally charged with "Refusal to comply with instructions of Car Foreman J. C. McPhearson at approximately 2:37 P.M., on March 24, 1965." hearing was set for 9:00 A.M. E.S.T., Friday April 2, 1965, copy attached and designated Exhibit (A). The hearing was held on schedule and transcript of hearing is attached herewith and designated Exhibit (B). On April 21, 1965 the Claimant was notified by the Carrier's Master Mechanic that he had been found guilty as charged and that he was notified that he was suspended for a period of thirty (30) days, copy attached and designated Exhibit (C).

The Claimant's appeal has been handled in accordance with the collective controlling agreement effective June 16, 1946, up to and including the highest designated officer of the Carrier to whom such matters are subject to appeal, with the result that said officer on more than one occasion has declined to adjust this dispute, which is affirmed by copies of letters submitted herewith as Exhibit (D) dated April 28, 1965. Exhibit (E) dated May 4, 1965. Exhibit (F) dated June 1, 1965. Exhibit (G) dated June 17, 1965. Exhibit (H) dated

But the poll failed to pin-point the right question to ask to achieve its presumed purpose—to find out if there was or was not a practice of permitting carmen at Union Station to blue flag cars or trains solely to oil journal boxes. The ten statements from the carrier's foremen (Carrier's Exhibit F) were directly responsive to this issue. That some people said they didn't know of the practice is not.

The carrier states categorically that carmen at Union Station are not now, and never have been, permitted to blue flag cars or trains solely for oiling journal boxes.

CONCLUSION: The carrier submits that it has evidenced a long-standing practice of not permitting individual carmen at Union Station to blue flag cars or trains for the sole purpose of oiling journal boxes; that the practice, as limited and circumscribed by existing orders and instructions, does not, and never did, present a safety hazard; and that the described task of oiling journal boxes is not, and never has been, considered subject to the "inspected or worked on" terms of Rule 80 as that rule has long been interpreted and applied on this property.

The carrier further submits that the petitioner failed to carry its burden of proving the existence of a safety hazard or a rule violation in this case and, therefore, failed to show that the claimant could properly defy his foreman's orders in preference to progressing a grievance through the established procedure.

The claim is without factual or agreement basis. It should be denied.

All data submitted in support of the carrier's position has been presented to the organization and has been made a part of the question in dispute.

Oral hearing is waived unless requested by the organization.

(Exhibits Not Reproduced)

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 waived right of appearance at hearing thereon.

This dispute centers on a thirty-day suspension meted out to a car repairman, the Claimant, for defying Foreman McPhearson's order not to put up a blue flag while oiling passenger cars standing in Union Station at Washington, D. C.

Petitioner contends that Claimant had every right to refuse to comply with the order since it constituted a threat to his physical safety. It points to Rule 80 of the controlling Agreement which provides that "Trains or cars

while being inspected or worked on by train yard men will be protected by blue flag by day and blue light by night, which will not be removed except by men placing same."

There is considerable controversy regarding the facts but we are given the distinct impression by the record, when considered in its entirety, that only minor oiling work was involved in the disputed task that did not require Claimant to inspect or work on the cars within the meaning of Rule 80 while they were standing on a passenger loading track in the station.

In any event, the burden of proof rests with Petitioner and we are not satisfied that the record in this case has established either that Claimant had to climb on, between or under the cars while performing his work or that the oiling of passenger cars while they are standing in a passenger station constitutes a clear and a present danger to employees who perform the work from the side of the cars without getting on, between or under them.

Accordingly, we find no justification for disturbing Carrier's findings or the discipline it considered appropriate under the circumstances of this case.

The claim accordingly will be denied. See First Division Award 19675 and Second Division Award 4623.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1967.