

**Award No. 5313**

**Docket No. 5024**

**2-CofG-CM-'67**

**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. 26, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**CENTRAL OF GEORGIA RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current Agreement Carman T. C. Hunnicutt was improperly suspended from service October 31, 1964, and discharged from service November 20, 1964 through May 2, 1965.

2. That accordingly the Carrier be ordered to compensate the aforenamed employe for all time lost from October 31, 1964 through May 2, 1965.

**EMPLOYES' STATEMENT OF FACTS:** Carman T. C. Hunnicutt, hereinafter referred to as the Claimant, employed by the Central of Georgia Railway Company, Columbus, Ga., hereinafter referred to as the Carrier, was taken out of service without a specific charge being made and before the holding of an investigation as shown in Mr. J. W. Mason's letter of October 26, 1964, marked Exhibit A, Carman Hunnicutt's letter of October 27, 1964, marked Exhibit A-1 and Master Mechanic Mason's letter of October 29, 1964, marked Exhibit A-2. Formal investigation was held November 14, 1964, copy attached and marked Exhibit B.

On November 20, 1964, the Claimant was notified he was dismissed from the service of the Central of Georgia Railway Company, copy attached, and marked Exhibit C.

On December 5, 1964, the General Chairman of Carmen of System Federation No. 26 wrote the Master Mechanic pointing out that the transcript of the investigation failed to prove the Claimant guilty and listing the rules violated, copy of which is attached and marked Exhibit D. On December 23, 1964, the Master Mechanic replied to the General Chairman's letter of December 5, 1964, declining the claim, copy attached, and marked Exhibit D-1.

On December 28, 1964, the claim of Claimant was appealed to the Vice President of Operations, Central of Georgia Railway Company, copy attached and marked Exhibit E. On January 7, 1965 the Vice President of Operations

## SUMMARY

The Carrier has clearly shown that the claimant was properly suspended from the service; that the charges for investigation were properly made; a fair and impartial investigation was held as evidenced by the transcript of investigation; the claimant was duly notified of the decision rendered, as per the rules agreement and normal procedure on this carrier. The testimony of Mr. Hunnicutt, the claimant, as well as others appearing at the investigation, showed conclusively that the charges were substantially sustained. Mr. Hunnicutt was responsible for the air not being properly cut in on Pullman Car "Banana Road."

The record further shows that there was nothing arbitrary or capricious about the suspension, investigation or dismissal of Mr. Hunnicutt. The very fact that the carrier re-instated Mr. Hunnicutt on a leniency basis in the hope the discipline of lost time had served its purpose, proves that there was nothing arbitrary or unreasonable about it, and there has been no abuse of discretion. In view of the foregoing, it is clear that the disciplinary action taken by the carrier was entirely justified. We respectfully insist that the Board not attempt to substitute its judgment for that of the carrier, which, in this instance, is the employing officer — Master Mechanic J. W. Mason. The claim is without any semblance of merit. The claim most certainly should be denied in its entirety.

Carrier, not having yet seen the Organization's ex parte submission, reserves the right, after the Organization has set forth its position to the Board, to present such additional evidence and argument as it deems necessary.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the claimant or his duly authorized representative, and made a part of this dispute.

An oral hearing is requested.

(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 employes within the meaning at 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 given notice on October 26, 1964 of a hearing to be held on October 30, "to develop the facts and determine your particular responsibility, if any, in connection with Train No. 9, a Northbound Seminole, being permitted to leave Columbus, Georgia, on Saturday afternoon, October 24, 1964, without air being properly cut in on Pullman Car Banana Road which resulted in all wheels being slid flat," etc. At his request the hearing was postponed for two weeks. Claimant was suspended from service on October 31, and on November 20, 1964, after the hearing, was dismissed; but on May 3, 1965 he

was restored to service on a leniency basis with vacation and seniority rights unimpaired, but without pay for time lost.

The claims are that his suspension and discharge were improper, and that he should be compensated for all time lost from October 31, 1964 to and including May 2, 1965.

The objection that the charge was not specific cannot be sustained; the claimant was clearly charged with responsibility for the incident and fully understood it.

It is undisputed that the car left the Columbus station with wheels sliding and so continued for about a mile before the train could be stopped, with resultant damage as stated in the charge, and that the cause was a closed angle cock at the rear of the dining car, which prevented air from releasing the brakes in the Pullman car, which was the next and rear car.

However, it is also undisputed that when in the switching operation the switch crew coupled the Pullman to the diner and coach and then switched and coupled them to the train and the inspection was made, the angle cock was open, the air was connected, and the brakes were operating properly. These facts were established by the testimony of the claimant, the switch engine foreman, and two switchmen, without any refutation.

How the angle cock could have been turned during the few minutes between the switching and inspection, and the train's departure is not explained; but in view of the above undisputed facts, the record cannot be held to sustain the carrier's conclusion that claimant's responsibility for the incident was proven.

On this record the claims must be sustained.

#### AWARD

Claims sustained with pay for all time lost, less any earnings in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1967.