



Award No. 5829

Docket No. 5658

2-CNO&TP-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)**

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY CO.**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Carmen R. L. Gooch and A. C. Gibson, Cincinnati, Ohio, were improperly suspended from service January 19, 1967 through March 26, 1967.
2. That accordingly, the Carrier be ordered to compensate the aforementioned employees for all time lost beginning January 19, 1967 through March 26, 1967.

EMPLOYEES' STATEMENT OF FACTS: Carmen R. L. Gooch and A. C. Gibson, Cincinnati, Ohio, hereinafter referred to as the claimants, were employed by Southern Railway Company (The Cincinnati, New Orleans and Texas Pacific Railway Company), hereinafter referred to as the carrier, at Gest St. Yard, Cincinnati, Ohio, and were removed from service January 19, 1967 through March 26, 1967, charged with, "Failure to properly perform your duties while inspecting B&O 360982, on January 11, 1967".

Formal investigation was held on January 17, 1967.

Via separate letters each under date of January 19, 1967, claimants were advised by Mr. O. A. Kitts, Master Mechanic, that they were guilty as charged and, therefore, were discharged from the service of Southern Railway Company (CNO & TP).

The decision of Mr. O. A. Kitts, Master Mechanic, was appealed by the undersigned to Mr. L. S. Presson, Jr., Superintendent Motive Power, on March 17, 1967.

Mr. L. S. Presson, Jr., Superintendent Motive Power, replied to the undersigned general chairman's appeal on April 13, 1967, stating that the master mechanic was instructed to allow these two carmen to return to service on a leniency basis with all rights restored, but without pay from January 19, 1967 through March 26, 1967.

(c) There can be no showing that the discipline imposed was arbitrary or capricious or in bad faith. Carrier's action in dismissing Car Inspectors Gooch and Gibson is fully supported by the principles of awards of all four divisions of the Board.

(d) The Board is without authority to substitute its judgment for that of the carrier. As evidenced herein, it has so held on many occasions.

On the basis of the evidence of record, the claim presented by the Brotherhood should be denied. Carrier therefore requests that the Board make a denial award.

All evidence submitted in support of Carrier's position is known to employee representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make response thereto and present any other evidence necessary for the protection of its interests.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The claimant Car Inspectors were assigned to inspect the Carrier's first class freight train No. CS-153, including car B&O 360982, in Gest Street Yard, Cincinnati, Ohio. Claimants both placed their pool marks on Car 360982 certifying that it had been inspected and was safe for movement. The Car itself was loaded with pipe, which according to certain AAR rules and regulations was to be fastened or secured in a certain way. As the train moved beyond mile post 237 near Annadel, Tennessee, a pipe or pipes on Car 360982 struck a signal at mile post 237.1 causing damage in the amount of \$1,110.00. As the train passed through Oakdale, mile post 254.4, the General Foreman ordered the train to stop, inspected the car in question and concluded that the pipe was improperly secured. He examined the pool marks of the inspectors, as a result of which an investigation was held resulting in the suspension of the Claimants.

A review of the record of investigation convinces us that the evidence presented was sufficiently substantial to warrant Carrier's decision in this case. Accordingly, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.

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