



Award No. 6174
Docket No. 6034
2-RDG-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Reading Company arbitrarily and without justification suspended Car Inspector Robert J. Grace for five (5) days, July 14, 15, 18, 19 and 20, 1969, as the result of a hearing held June 16, 1969.

2. That Car Inspector Robert J. Grace be made whole by having the Reading Company pay him the five (5) days' wages he lost.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Robert J. Grace, hereinafter referred to as the claimant, was hired as a car repairer helper at Rutherford Yards, Rutherford, Pennsylvania, on April 16, 1953 by the Reading Company, hereinafter referred to as the carrier.

December 22, 1955, claimant was advanced to up-graded helper; worked as such until he qualified for placement upon the Carmen mechanics' seniority, which was done on January 12, 1962.

Upon being furloughed in April, 1963, claimant applied for carman mechanic position at Reading Car Shop and he was transferred thereto on April 11, 1963, at which point he was working on day of hearing held on June 16, 1969.

Shortly thereafter, claimant transferred back to Rutherford Yards at which time the instant claim was initiated with the carrier by the Local Chairman of Harrisburg Lodge No. 25, BRCoFA.

Claim for the five (5) days' wages lost was filed with the proper officers of the carrier up to and including the highest officer so designated to handle such claims, all of whom declined to make satisfactory adjustment.

if the area in which he was working was free of material in order to insure a safe escape in the event of a shift in the load.

Most importantly, the claimant had been instructed that two men were not permitted to guide the load because it created the hazard of collision or tripping in an attempt to escape a shifting load.

Carrier submits that the discipline assessed in the instant case was justified in a two-fold manner. First, the claimant failed to survey his work area for loose material which would impede an escape and he compounded this negligence by working with another employe, contrary to his superior's instructions. Secondly, the discipline assessed must be viewed as a necessary preventative measure to insure the claimant's future concern for his welfare when engaged in dangerous work. Carrier suggests that a five day suspension is more endurable than the lament of one's own funeral.

For the reasons advanced herein, carrier requests that the claim of the brotherhood be denied. This claim has been handled by conference and correspondence on the property.

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.

Claimant was suspended for five (5) days for sustaining a personal injury at Carrier's Reading Car Shop, Reading, Pennsylvania, on January 24, 1969.

Carrier alleges that the discipline assessed against Claimant was justified because: (1) Claimant failed to survey his work area for loose material which would impede an escape and by working with another employe, contrary to his superior's instructions; and (2) the discipline assessed against Claimant is a necessary preventative measure to insure the Claimant's future concern for his welfare when engaged in dangerous work.

The facts as developed at the hearing were that Claimant was helping to unload sides on two flat cars while working as a hookup man.

Claimant was asked at the hearing by Carrier's Superintendent of Freight Car Construction, W. L. Fisher, the following question:

"Q. You were at the north end, one car length beyond the car you were going to unload the sides on. Was it free of material?

A. I don't remember."

Carrier did not produce any evidence to show that Claimant failed to survey his work area for loose material which would impede his escape

while he was helping unload said flat cars. Mere assertions without supporting evidence are of no probative value.

Further, in regard to whether or not Claimant disregarded the instructions of a superior officer, the record reveals that said Superintendent Fisher asked Claimant the following question:

"Q. Do you recall me telling you when you guide material that only one employe is to guide it, and not two men to guide it so that you had a stepping back and away in case something would slip?

A. No, I had three different jobs assigned to me that day. First, I was to go at the Old Inspector's Shanty and help to unload sides; then I was to fill in for an absentee up with Mr. Ughes, Assistant Foreman, at the Dismantling Program. Then, about 9 A.M., I was supposed to go back down and help to unload car sides on two flat cars."

While the inference could be drawn that said Superintendent Fisher did instruct Claimant for only one employe to guide material rather than two, yet Superintendent Fisher did not at any time at the hearing testify that he did direct Claimant to so unload the material in question. Further, Claimant testified that Assistant Foreman Hetrich had suggested to him that better control of guiding the sides would be with two men on each side guiding said material. Carrier did not bring in Mr. Hetrich to refute Claimant's said statement.

Thus, the record indicates not only conflict as to the manner in which the sides were to be unloaded, but also there is a question as to whether or not Claimant received specific instructions from Superintendent Fisher as to how he was to so help unload said sides. Carrier failed to meet its burden of proving Claimant guilty as charged by a preponderance of the evidence, and, therefore, we must sustain the Claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1971.