

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: ( System Federation No. 21, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman C. L. Rawson, Meridian, Mississippi, was improperly suspended from service from October 25 through November 14, 1972.
2. That accordingly, the Carrier be ordered to compensate Carman C. L. Rawson for all time lost from October 25, 1972 through November 14, 1972.

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 waived right of appearance at hearing thereon.

Claimant, who has been in Carrier's employ in excess of twenty-eight years, was charged with and following an investigation found to have "not properly inspecting, on October 24, 1972, the cross key retainer on North B end of MP 613442, to determine the condition of all parts thereof including the cotter key". Carrier imposed upon Claimant a disciplinary suspension from work for three weeks.

It is well established that this Board, concerned for the survival of the railroad system in the United States; the safe movement of passengers and freight; avoidance of injury to employees and the public; protection of railroad equipment from damage or destruction; has afforded management extensive leeway in dealing with employees who malfunction or misfunction in the performance of their assigned duties (Award 6419). As well and succinctly stated by Carrier in its submission, this Board "will not substitute its judgment for that of the Carrier in discipline cases if the evidence of record shows that the carrier complied with the procedural requirements of the effective agreement and that the disciplinary action was not arbitrary, capricious or an unreasonable abuse of managerial discretion." This was properly culled from Awards 1575, 2996, 3081, 3430, 3874, 5020, 6346, 6419 of this Division.

To guide the Parties in their handling of disciplinary matters on the property, the various Divisions of this Board have outlined the criteria which will be applied in reviewing whether the record discloses that the above quoted standards were satisfied. Briefly, the burden of proof concerning the charge against the claimant is borne by the Carrier. (Awards 1325, 1769, 1969, 4046, 6419, 6487 and 6580 of this Division); conflicting testimony at the investigation will not be considered to be of major significance providing there is substantial evidence in the record to support the findings below (Awards 2996, 4981 and 5723);

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229);

"the evidence must have sufficient sustance to support a reasonable inference of fact as distinguished from a possibility or an unsupported probability" (First Division Award 12952); mere suspicion is not sufficient to prove the offense charged (Awards 1325, 1969, 4069 and 6419).

In the record before us it is eminently clear that Carrier's deciding officer relied primarily, if not exclusively, upon the estimate and evaluation by a General Foreman as to the cause and responsibility for the mishap which resulted in the charge and discipline imposed upon Claimant. This witness inspected the equipment which had dropped its coupler due to lack of securing the cross key, at the site of the occurrence which was approximately seventy miles north of the yard in which it uncontrovertedly was inspected by Claimant. He insisted that the cotter pin which would have held the cross key in place had to be on the side of the freight car which, according to markings thereon and admitted by Claimant, was inspected by Claimant and approved for movement at the Meridian, Mississippi Yard. His conclusions were based upon "Standard Procedure" for installation of cross keys, but he admitted that such were not followed in all instances. There was testimony by both Carrier and Organization witnesses that cross keys were inserted in an opposite direction so that cotter pins securing it might be on the other side of the car and if this was the case relative to MP-613442 on the night of October 24, 1972, the defective condition, if it existed at the Meridian Yard, would not have been observed by Claimant, because that side of the car had been checked by a foreman and student mechanic at Meridian that night.

For some inexplicable reason, Carrier did not call upon the foreman who inspected the right side of the car to testify concerning the position of the cross key when he inspected that side of MP-613442. This would have been the best evidence of the conditions when the car was inspected at Meridian. Instead the determination was made by the Master Mechanic on the basis of suppositions made by a General Foreman as a result of his study of the equipment at the point where the coupler fell off, disconnecting the car and those behind it from the moving train. As stated above,

this was seventy miles north of the Meridian Yard and the train had, according to Petitioner and not rebutted by Carrier, passed through two of Carrier's repair points, without any defect being observed prior to the disengagement.

It must be held that Carrier's action was founded on assumptions, possibilities and suspicions which do not satisfy the above cited criteria for probative evidence to support the burden of proof which would entitle it to invoke its managerial discretion.

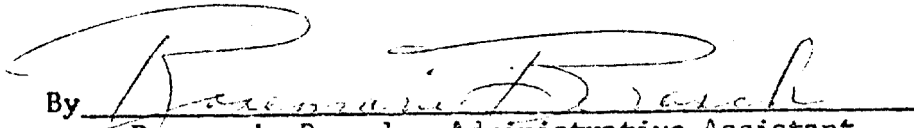
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1974.