

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES' DEPARTMENT,
A. F. OF L. (CARMEN)**

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Pay for time lost by Messrs. H. Winger and G. C. Woner, car inspectors, at Silvis, Illinois.

POSITION OF EMPLOYEES.—On January 25, 1934, a Joliet merchandise train pulled into the Silvis yards. Mr. Winger and Mr. Woner were working as partners. They began their work on this train in the same manner and form as they had at all times previous and which was the established routine—completing same without delay to train or yard movement.

The lead inspector, acting as a supervisor, had told these men the switch crew wanted a "cut" at the head end of the train, but he did not tell them to start at the head end first. Nor did he tell them to arrange their work in any manner other than the way they usually did it; although he was with them and did himself cut in at the middle of train. However, he took exception this particular day and reported both men for insubordination to his superior officer.

The employees' position is, further, that the charge placed upon these men was not based on facts and the lead inspector should have definitely instructed Winger and Woner to start at the head end. That the claim of the carrier—failure of the employees to follow instructions caused delay in train movement, is exaggerated. No proof of delay was shown by the investigation. That the same routine of work was followed then as now—the inspectors start in the middle of the train and work towards the head end unless definitely instructed to do otherwise.

Further, the employees contend that the real reason they were dismissed is that Winger and Woner had cancelled their membership with the company union and then joined the B. R. C. of A., affiliated with the A. F. of L.

With reference to the waivers that these men signed under duress: the carrier was notified that the organizations these men were affiliated with did not recognize waivers signed under such circumstances as being valid.

Rule 34 of the shopmen's agreement, dated 1929, states clearly:

"At a reasonable time prior to the hearing such employe will be notified of the precise charge against him. The employe shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by the Division Chairman of his craft."

Messrs. Winger and Woner were not given the opportunity to furnish witnesses, or notified previously to have a representative at this investigation.

Rule 34 further states:

"If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from the suspension or dismissal."

POSITION OF CARRIER.—H. Winger and G. C. Woner, car inspectors at Silvis, Illinois, were dismissed on January 25, 1934, for disobedience and insubordination. They were reinstated in service with full seniority rights, but without pay for time lost, on February 28, 1934.

The customary method of inspection of inbound freight trains in Silvis is for two inspectors, one on each side, to start at head end of train where engine is cut off and work toward middle of train. Two inspectors, one on each side, start at rear end or where caboose is attached and work to the middle of train, and when they meet the inspection is completed and train is released.

When there is urgent need for special handling of certain cars, inspectors are instructed to give a certain number of cars off head or rear end, as the case may be, and in that event the inspectors inspect the number specified, then move their blue flag or light to the location of the special cars and allow the switch crew to take the cars inspected.

On the morning of January 25, 1934, twenty minutes before the arrival of the Joliet merchandise train, Lead Inspector Ratcliffe, whose duties are to direct the movement of and issue instructions to car inspectors in Silvis train yard, went to the West Yard inspector's shanty and instructed Inspectors H. Winger and G. C. Woner to give the switch crew two cars off the head end of this train. The train in question being a westbound freight train would pull by the West Yard inspector's shanty. With the ample advance notice given Winger and Woner by lead inspector of the two cars desired on the head end, the proper move for Winger and Woner would have been to proceed to the west end of the yard where the engine customarily stopped and as soon as the engine had been cut off, inspect the two cars which were desired on the head end, thus releasing them so the switch crew could handle same. However, these two inspectors apparently elected to disregard entirely the instructions of their supervisor and remained in the inspector's shanty until the train was pulling into the yard and they then only had time to walk to the location of the overhead foot bridge when the train stopped. Having reached this point, they apparently decided to again ignore the instructions of their supervisor, as instead of continuing to the engine and taking care of the two special cars, a distance of approximately 1,150 feet, they started inspecting toward the engine from about the middle of the train.

In accordance with requirements of the agreement with shop men in effect at that time, these men were given an investigation before the proper officer of the company and were accorded the right of representation by an employee of their own choice.

The representative of the employees has intimated there was some ulterior motive behind the dismissal of these men, charging that supervisors were influenced by their activities in affiliating with a certain labor organization. No such insinuation or charge is justified as these men were discharged because they did not comply with the instructions of their supervisor and for no other reasons. During January, 1934, dues of employees, who were members of the Rock Island Association, were collected by dues deduction orders, signed by the employees, authorizing their dues be paid direct from their earnings to the Treasurer of the Association, and, under this plan, a card record was maintained in the company's time keeping offices for each such deduction made, and Mr. Woner's deduction card shows he was a member of and paid dues into that Association during each month in the year 1934, with the exception of January and February, when he was out of service, and in November and December, he having filed a cancellation notice with the carrier on October 26, 1934. Mr. Winger's deduction card shows he was a member of and paid dues into the Association during March, April, May, June, July, and August, 1934, no deduction being made in January and February while out of service, and no deduction after August, 1934, because he filed a cancellation order with the carrier on August 25, 1934.

The dismissal of these men was warranted and justified in view of their attitude in refusing to comply with instructions of their superior and their claim for time, which is an attempt to repudiate their signed waiver, is not supported by any contract nor moral obligation and should be definitely declined.

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.

The parties to said dispute were given due notice of hearing thereon.

This is not the usual case of discipline by the ordinary employer. We agree that the railroad management must accept full responsibility for its employees and their fair and just discipline. Where, however, there is an unusual situation existing, great care should be taken to protect the rights of employees who

are dependent upon their wages for their livelihood, and who may be dealt with in arbitrary manner in a time of stress.

The record in this case is long and filled with testimony relating to sharply disputed issues of fact. We feel it would serve no useful purpose here to review the situation as it existed at the time of dismissal, or to attempt to reconcile the testimony of men who differed on questions that were not directly related to the work which was then being performed.

The issue before us in this case is a dispute similar in nature to those disposed of in Awards Nos. 22 and 23 of this Division.

H. Winger and G. C. Woner were unjustly dismissed January 25, 1934.

AWARD

H. Winger and G. C. Woner, car inspectors at Silvis, shall be paid for time lost from January 25, 1934, to February 28, 1934.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1936.