

Award No. 906

Docket No. 825

2-ACL-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

- (a) That the investigation accorded Car Inspector L. W. Keeter, Jacksonville, Florida, was unfair and improperly conducted.
- (b) That the discipline administered (thirty days actual suspension) was unjustifiably assessed.
- (c) That he, L. W. Keeter, is entitled to compensation in the amount of Two Hundred and Sixteen (\$216.00) Dollars to cover all time lost—thirty (30) days, @ \$7.20 per day.

EMPLOYES' STATEMENT OF FACTS: L. W. Keeter was employed by the Atlantic Coast Line Railroad Company as car repairer in its Moncrief shops, Jacksonville, Florida, December 12, 1922. Keeter was assigned as air brake repairer and he was for a number of years air brake repairer lead man. His duties were largely confined to the supervision and maintenance of triple valves and other air brake equipment on freight cars.

In August 1940, Keeter exercised his seniority for car inspector's position and was assigned to the third shift, working from 11:30 P. M. to 7:30 A. M.

At 5:25 A. M., November 3, 1941, Johnny J. Jones' show train arrived in Jacksonville en route south. Inspectors Steel and Keeter started inspection on arrival of train at engine or head of train, and Inspectors Shaw and Embrechts started at the cab. Each group inspected twenty cars, there being thirty-nine cars and one cab in train. On meeting in the middle of the train, Inspectors Shaw and Embrechts reported to the other inspectors, Steel and Keeter, that brass would have to be applied to Car 49 near rear of train. There being no repairs to be made to cars in head of train, Inspector Keeter proceeded to rear of train with Inspectors Shaw and Embrechts, where he might be of service, while Inspector Steel returned to head of train to couple outgoing road engine.

When Keeter reached Car 49, the work of rebrassing had already commenced, same being done by Car Oiler and Packer W. C. Drummond, assisted by Car Foreman H. G. Moore. The angle cocks on both north and south ends of this car had been cut; one by Car Foreman H. G. Moore, the other by the yardmaster; both without Mr. Keeter's knowledge.

It will be noted from the statements taken from Inspector Keeter, also the statements submitted as exhibits from the other inspectors and the statements from the trainmaster and the conductor and car foreman that there was no question but that this train was allowed to leave Jacksonville with the brakes inoperative on several of the rear cars due to the fact that there was a closed angle cock on the fifth car from the rear.

It was Car Inspector Keeter's duty to see that the air was operating on that portion of the train assigned to him to inspect and had he given the rear end of this train the proper inspection he would have very quickly found out that there was no air on the rear cars due to the train line being closed off at Coach 49. It is a very serious offense for a car inspector to allow a train to leave a yard with air brakes on any car inoperative and it is especially more so when there is no train line to the caboose giving the conductor no control whatsoever in stopping the train should any emergency come up. Keeter was negligent in his duties and the carrier was very lenient with him in disciplining him with thirty days' suspension for this offense.

This was a distinct violation of the Federal laws governing the inspection of trains and had we not been able to stop this train before it got very far out of the yard, the consequences might have been quite serious, not only in damaging equipment due to brakes sticking but also the fact that the conductor had no control over the train.

Carrier contends L. W. Keeter was negligent in his duties and the discipline administered was merited and justifiable and that the agreement was not violated.

Therefore, respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

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.

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

Implicit in Rule 21, which provides that no employe will be disciplined without a "fair hearing," and at such hearing be represented by "the duly authorized representative," is the requirement that such representative be permitted to examine and question either the accused or any other witness appearing at the hearing. The facts of record disclose that the authorized representative of Mr. Keeter was denied the right to examine or question Mr. Keeter unless such questions were propounded through Mr. Moore, the carrier representative. Addressing himself to the representative of Mr. Keeter, Mr. Moore stated:

"If there are any questions you wish to ask or any points you wish brought out that I failed to bring out, you are at liberty to state your points to me and I will bring out any points you wish brought out."

That such procedure denied the accused either a "fair hearing" or "representation" at the hearing is too obvious to require discussion.

Mr. Keeter was denied the fair hearing to which he was entitled under Rule 21, and it follows that the discipline imposed cannot be sustained.

AWARD

Claim (a) Sustained.

Claim (b) Sustained.

Claim (c) Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.