

Award No. 966

Docket No. 910

2-DL&W-CM-'43

## NATIONAL RAILROAD ADJUSTMENT BOARD

### SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

#### PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (CARMEN)

THE DELAWARE, LACKAWANNA & WESTERN  
RAILROAD COMPANY

#### DISPUTE: CLAIM OF EMPLOYES:

(a) That the carrier on October 14, 1942, violated the controlling agreement and Rule 32 thereof, at the Keyser Valley Shops, Pennsylvania, by taking Carman Michael Evenceau out of service without a hearing.

(b) That Carman Michael Evenceau be compensated from 10:00 A. M. to 3:30 P. M. on October 14, 1942, and from 7:00 A. M. to 3:30 P. M. on October 15, 1942, less one half ( $\frac{1}{2}$ ) hour lunch period each day, a total of thirteen (13) hours.

**EMPLOYES' STATEMENT OF FACTS:** Carman Michael Evenceau is regularly employed by the carrier at the Keyser Valley shops, Pennsylvania, and carries a seniority date of July 28, 1924.

On October 14, 1942, at 10:00 A. M., Carman Michael Evenceau was taken out of service at the Keyser Valley shops, Pennsylvania, by General Foreman Edwards, who found Carman Evenceau smoking while on duty. Evenceau was waiting for his work to be spotted and was smoking, this was the practice of all in this shop for many years.

The shop committee met with General Foreman Edwards at 11:30 A. M., October 14, 1942, and requested that Carman Evenceau be returned to work immediately and given a hearing as this case did not warrant dismissal without first being heard, as no damage was done and no damage could have been done in this shop. General Foreman Edwards refused to comply with the committee's request.

At 3:30 P. M., October 14, 1942, Chairman Petrerio, of the grievance committee, was handed a notice by General Foreman Edwards, this saying that Carman Evenceau would be given a hearing at 10:00 A. M., October 15, 1942.

General Foreman Edwards, Shop Foreman Thomas, and Assistant Shop Foreman Phillips, called at Carman Evenceau's home after their working hours on October 14, 1942, and notified Carman Evenceau that he would be given a hearing in General Foreman Edwards' Office at 10:00 A. M., October 15, 1942. This was the first time that General Foreman Edwards

the "No Smoking" Rule is one of the most important shop rules in the railroad business. Accordingly, there was no violation of Rule 32, in suspending Evenceau for thirteen hours and it is respectfully submitted that the claim should be denied.

**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.

The evidence of record does not disclose any adequate grounds for disturbing the disciplinary action of the management.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1943.