

Award No. 1009

Docket No. 941

2-LV-CM-'44

**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. 96, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the former agreement and Rule 25 thereof, the carrier be ordered to pay Carmen Benjamin Thomas, Edward Meneeley and James J. Fenimore, each eight hours at the pro rata rate from 7:30 A. M. to 3:30 P. M. on February 9, 1942, for the services which they rendered at Wilkes-Barre, Pennsylvania.

EMPLOYES' STATEMENT OF FACTS: The claimants, Carmen Thomas, Meneeley and Fenimore, were regularly employed at Coxtton, Pennsylvania during the hours from 7:30 A. M. to 3:30 P. M., seven days per week. Monday February 9, 1942, was included in this regular assignment.

On Sunday, February 8, 1942, the carrier verbally notified Carmen Benjamin Thomas, Edward Meneeley and James J. Fenimore to report at Wilkes-Barre on Monday, February 9, 1942, for an investigation in the office of Superintendent Mitten at 8:00 A. M.

These carmen complied with instructions and reported at the office of Superintendent Mitten at Wilkes-Barre at 8:00 A. M. The investigation started at 9:30 A. M. and was completed at 6:30 P. M.

These claimant carmen promptly turned in their time cards to their foreman, J. Thomas, for eight hours pay each on February 9, 1942, which equaled the time they would have worked at Coxtton on that date.

The result of the Wilkes-Barre February 9 investigation was made known to these carmen claimants under date of March 4, 1942, as per the letters signed by Mr. F. S. Mitten, superintendent, submitted and identified as Exhibits A, A-1 and A-2.

The general foreman, Mr. F. Dessoy, advised the local committee under date of March 11, 1942, that the time cards of these claimant carmen were disapproved and the carrier to date has declined to allow payment of this time.

The distance between Coxtton and Wilkes-Barre is ten miles.

The agreement controlling is dated effective May 1, 1938.

The investigation indicated conclusively that these men failed in their duty and were primarily responsible for the damage to equipment. Therefore, they were disciplined and not allowed time lost for attending the investigation.

In connection with the claim being based on Rule 25 of the old agreement, May 1, 1938, attention is called to the fact that this rule provides for payment when attending court and has no application to attending investigations in which they are concerned.

The agreement of May 1, 1938, with maintenance of equipment employes contained no rule covering investigations, but it had been the practice for all time when men were called for investigations of accidents or violation of rules, in which they were concerned, if they were found blameless and lost time, they were paid for it, but if they were responsible for the accident or for the violation of rules, they lost the time. As a matter of fact, this was and is now the practice with all crafts, the majority of the crafts having a specific rule providing for this.

In the new agreement with the maintenance of equipment employes, effective November 1, 1942, there is included Rule 37, which reads:

No employe shall be disciplined without a fair hearing by designated officers of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and his duly authorized representative will be apprized of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. 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 said suspension or dismissal, less amount earned in other employment.

It will be noted under this rule these employes would not be entitled to payment for attending the investigation.

As stated, it is our practice to conduct investigations and make allowances in accordance with the above rule, and has been for many years, and in this case the employes were apprized of the charge against them and were represented at the investigation by the local chairman of their committee, and agreed at the close of investigation that it was conducted in a fair and impartial manner.

In view of the facts outlined above, there are no grounds for this claim, and it 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 waived right of appearance at hearing thereon.

The discipline assessed against the claimants in this proceeding on March 4, 1942 did not, expressly or by implication, include the loss of one day's pay; and no adequate reason has been adduced for depriving these claimants of

compensation for the day's work lost by them because they attended the investigation at Wilkes-Barre on February 9, 1942, at the carrier's request, for the purpose of helping the carrier determine the cause of the accidents being investigated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1944.