

Award No. 1061
Docket No. 975
2-LV-CM-'45

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That within the meaning of the controlling agreement, the carrier unjustly dealt with Car Inspector Raymond J. Mulcahy when he was removed from service on January 26, 1944, for a period of ten days.
2. That the carrier be ordered to reimburse Car Inspector Mulcahy for the ten days' time lost at \$7.84 per day or a total of \$78.40, and accordingly clear his personal record.

EMPLOYEES' STATEMENT OF FACTS: Raymond J. Mulcahy has been regularly employed by the carrier at Sayre, Pennsylvania, as an inspector since September 8, 1922, and his regularly assigned hours are from 7:00 A. M. to 3:00 P. M., seven days per week.

Claimant Mulcahy reported for duty as usual at about 6:45 A. M. on January 26, 1944, to begin his shift at 7:00 A. M., when he was verbally informed by Lead Car Inspector R. Drake that effective at once he was suspended from service for a period of ten days.

This removal from service was affirmed by the superintendent of shops on January 28, 1944.

Depriving this claimant of the right to work his regular assignment for ten days has been appealed as provided in the controlling agreement, effective November 1, 1942, and after having discussed it thoroughly with the highest designated officer of the carrier to handle such matters, the claim was declined, which is confirmed by letter addressed to the undersigned by Mr. Haines dated May 23, 1944, copy of which is submitted.

POSITION OF EMPLOYEES: Rule 35, captioned, "Grievances," in pertinent part, reads:

"Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken. . . ."

A close inspection of these locks by car inspectors is one of their most important duties, and the failure on their part might result in a very much more serious accident than in this case. Notwithstanding the statement of Mr. Mulcahy, the circumstances indicate that he failed to note position of these locks when inspecting this car and, therefore, it was necessary that discipline be imposed in order that he would be more careful in the future, and we hoped would result in closer attention by other car inspectors to this important part of their work.

We, therefore, ask that your Board sustain our position.

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.

Claimant was regularly employed at Sayre, Pennsylvania, as an inspector. In the regular course of his duties he made an inspection of car No. NX 1470 which had a milk tank fastened to it by four locks. His testimony is that he inspected the car, and that the locks holding the tank on were in proper position. The car moved in a train approximately 125 miles before the milk tank fouled the adjacent track causing damage. The train had made a stop at Coxton for some minutes, the employes contending that an inspection had been made there.

There is direct evidence by the claimant that he inspected the car and the locks were in proper position. The only evidence contradicting the claimant is the fact that the locks were not in position 125 miles from the place claimant inspected same. In view of the fact that the car had traveled such a long distance and had made stops en route, this Board is of the opinion that the evidence does not justify the conclusion reached by the carrier, and the claimant is entitled to have his personal record cleared and be reimbursed for the time lost.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1945.