

**Award No. 1198**

**Docket No. 1121**

**2-LV-CM-'47**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—CARMEN**

**LEHIGH VALLEY RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** That Car Oiler Charles Hartman was unjustly deprived of his service rights on November 15, 16 and 17, 1945, and that accordingly the carrier be ordered to reimburse him for said time lost.

**EMPLOYES' STATEMENT OF FACTS:** Charles Hartman, herein-after referred to as the claimant, has been regularly employed by the carrier at Packerton, Pennsylvania, since April 16, 1926, and was regularly assigned as a car oiler in the inspection yard at Packerton from 11:00 P. M. to 7:00 A. M., six days per week, at the time he was removed from service for three days November 15, 16 and 17, 1945.

On August 25, 1945, the claimant was required to submit to a question-and-answer investigation, and a copy of same is submitted and identified as Exhibit A.

On November 3, 1945, the claimant was notified by General Foreman L. E. Remaley that he was given three days' actual suspension, November 15, 16 and 17, 1945, and notation accordingly would be placed on his service record, copy of which is submitted and identified as Exhibit B.

Depriving this claimant of his right to work his regular assignment for three days has been appealed as provided in the current agreement, effective November 1, 1942, and 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 to the undersigned by Mr. Wagner, dated December 27, 1946, copy of which is submitted and identified as Exhibit C.

**POSITION OF EMPLOYES:** Rule 35, captioned "Grievance" in pertinent part, reads:

"Should an 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 \* \* \*."

and within the meaning of the provisions of this rule, it is respectfully submitted that the claimant was an employe subject to the controlling agree-

method of impressing employes with their obligation of performing their duties in the proper manner for the safe and uninterrupted movement of trains.

We believe that the discipline imposed in this case was justified and reasonable, consistent with the responsibility of the individual and the facts developed, and respectfully ask that the Board sustain our action.

**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.

Even though the Division does not sustain the carrier in its application of discipline to the car service employe in this case, it is not unmindful of the carrier's responsibility in operating a railroad under numerous laws and regulations, nor of the employes' highly important responsibilities and duties in re car inspection, repairs, etc. On the proper or improper performance of their duties depends, to a large extent, the safe or unsafe movement of trains.

When there exists, as in the several cases before this Division, defects in equipment, discovered after inspection or work had been performed, in some instances quite some time later, there is no doubt but that certain defects existed and were not discovered or that certain work was not performed.

In each case there is not the direct evidence of guilt on the part of the employe accused, that would warrant this Division in holding that each of the employes had been justly treated by the carrier in the application of discipline by actual suspension.

The decisions or judgments of the carrier in these cases hinged largely on assumption—there was no direct proof, nor could it be held that there was high probability that the employe suspended was, under all the circumstances cited, individually, wholly or mainly responsible as charged.

From a review of the record and consideration of the oral and written evidence, we find the discipline through suspension in these cases was not warranted account of lack of sufficient evidence or reasonable proof of guilt. There does not appear just cause for suspension.

#### AWARD

The claim that the employe was unjustly dealt with is sustained.

The claim or time lost or reimbursement is sustained only in so far as loss of earnings may be involved, due to the employe being scheduled or not scheduled to work on the dates suspended.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1947.