

Award No. 1200

Docket No. 1123

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.

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Carman John Hibbard was unjustly deprived of his service rights on February 20th and 21st, 1946, and that accordingly the carrier be ordered to reimburse him for said time lost.

EMPLOYES' STATEMENT OF FACTS: John Hibbard, hereinafter referred to as the claimant, has been regularly employed by the carrier at Oak Island, New Jersey, since July 22, 1936, and was regularly assigned as a car inspector from 12:00 midnight to 8:00 A. M., six days per week, at the time he was removed from the service for two days February 20 and 21, 1946.

On December 18, 1945, the claimant was required to submit to a question-and-answer investigation, and copy of same is submitted and identified as Exhibit A.

On January 17, 1946, the claimant was notified by Superintendent C. L. Patterson that he would be suspended for a period of two working days copy of which is submitted and identified as Exhibit B.

On February 18, 1946, the claimant was verbally informed by General Foreman R. F. Rymell that he would be removed from service for two days, effective February 20 and 21, 1946.

Depriving this claimant of his right to work his regular assignment for two 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, caption "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-

ment, that he believed that he was unjustly dealt with and that said agreement was violated when he was deprived of his right to work his regular assignment for two days February 20 and 21, 1946, at 12:00 midnight.

It is further submitted that this claimant was deprived of his right to work his regular assignment for two days without any bona fide cause whatever and without authority to do so under the terms of the controlling agreement, particularly that part of Rule 37 reading:

“If it is found that an employe has been unjustly suspended
* * * from the service, such employe shall be compensated for
wage loss, if any, resulting from said suspension * * *”

for the reason he was not found guilty of having improperly performed his duty on December 12, 1945.

The mere fact that Superintendent C. L. Patterson elected to hold this claimant responsible for some alleged failure to do what the carrier officer felt he should have done does not convict this claimant of any wrong performance or warrant this carrier officer imposing upon this claimant any loss of time, or any unjust dealing with him otherwise.

Nothing whatever can be found in any reasoning that the carrier has thus far advanced which would even suggest that this claimant be made to suffer a minute's loss of time from his regular assignment without compensation thereof, and the Division is requested to sustain the claim.

CARRIER'S STATEMENT OF FACTS: On December 12, 1945, Car Inspector John Hibbard was assigned and working tour of duty as car inspector on the third trick from 12:00 P. M. to 8:00 A. M. at Jersey City, New Jersey. He was assigned to inspect cars dispatched in passenger train No. 37 at Warren Street and Jersey Avenue, New Jersey. Car D&H 22572 was added to the consist of train No. 37 at Jersey Avenue, at which time it was required to be inspected by Hibbard, and in his report of inspection of the cars dispatched in this train, he indicated all of the cars, including D&H 22572, were in proper condition for road movement. On arrival of train No. 37 at Newark, a distance of nine miles, it was found the brake rigging was down and dragging on “A” or east end of car D&H 22572, location R-3, due to truss rod nut missing, allowing truss rod to come out of shoe head. It was necessary to set this car out of train for repairs, causing delay in movement of car and delay to passenger train.

POSITION OF CARRIER: On December 12, 1945, Car Inspector J. Hibbard made inspection of car D&H 22572 before dispatched in train No. 37 from Jersey City, at which time he failed to observe truss rod nut missing at “A” or east end of car, which permitted truss rod to come out of shoe head and permit brake rigging to come down and drag, which was found upon arrival of train at Newark, only nine miles distant from point from which car was dispatched in train.

It is one of the more important duties of a car inspector to closely inspect cars dispatched in trains to detect defects of the kind which existed in this case. There can be no question regarding Hibbard's failure to discover the missing truss rod nut on car D&H 22572, and for his failure to make proper inspection of this car, the discipline imposed was justified.

It is the judgment of the responsible officers of this railroad that such failures on the part of car inspectors cannot be passed without discipline, as this is the recognized method of properly impressing employes with their obligation of performing their duties in the proper manner for the safe and uninterrupted movement of trains. We believe the discipline imposed in this case was justified and reasonable, consistent with 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 unjustly 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 for time lost or reimbursement is sustained only insofar 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.