

Award No. 1212
Docket No. 1146
2-Reading-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. 109. RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (CARMEN)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carmen Edward Henry and Russel C. Bachert were each unjustly suspended from the service for five days, effective January 8, 1947, and that accordingly the carrier be ordered to reimburse them for said time lost, including clearance of their service records.

EMPLOYEES' STATEMENT OF FACTS: Carmen Edward Henry and Russel C. Bachert, hereinafter referred to as the claimants, were regularly employed as such for many years at the Tamaqua car shop, Pennsylvania. On October 18, 1946, these claimants were under the supervision of Acting Assistant Foreman J. N. Schrock and Car Shop Foreman C. A. Billig.

On October 18, 1946, these claimants were assigned to make certain repairs to Erie box car 72665, and before all incidental work attached to this assignment was completed these claimants were instructed by Car Shop Foreman C. A. Billig at 2:40 P. M., upon lowering the jacks, to leave them set and proceed to do certain jobs on three other cars. In the meantime the supervision released Erie car 72665 for service without having the work on it completed.

On October 19, 1946, these claimants were charged with failures to complete their assignment on Erie car 72665, Friday, October 18, and their hearing was set to begin at 2 P. M. Wednesday, October 23, 1946. This is affirmed by copy of letter submitted and identified as Exhibit A, signed by C. A. Billig, the car shop foreman at that time. This hearing date and time was acceptable to all concerned parties and it was accordingly held, which is confirmed by copies of the transcript record, identified as Exhibits B and B-1, respectively signed by Claimant Henry and Claimant Bachert.

Pursuant to the carrier having conducted improper investigations subsequent to October 23, 1946, Claimant Henry was handed "M P 1115" on January 7, 1947, copy of which is submitted and identified as Exhibit C, and he was verbally told at that time to start serving the suspension from service of five days on January 8, 1947. Likewise, Claimant Bachert was handed "M P 1115" on January 7, 1947, copy of which is submitted and identified as Exhibit D, and he was verbally told at that time to start serving the suspension from service of five days on January 8, 1947.

repairers and the foreman and then a supplemental hearing was held at which all those involved were present and were privileged to cross-examine as they desired and an opportunity was afforded to compose any differences and fully develop all the facts and circumstances, therefore, Award No. 303 is not controlling and does not support the Brotherhood's contention that the hearing was faulty or irregular.

Due to the brake rod not having been connected with the live lever while repairs were being made to Erie 72665 on October 18, Brakemen Clemens and Miller sustained and suffered personal injuries while applying hand brake on this car in Tamaqua Yard on October 19. Brakeman Clemens was injured to the extent that he was incapacitated from October 19 to November 5, 1946, for which the carrier has made settlement. Brakeman Miller's injuries were such that he has not as yet returned to duty and has instituted suit against the carrier to recover damages in the amount of \$100,000.

This is a discipline case, wherein the Brotherhood Railway Carmen and System Federation No. 109 request the Second Division of the National Railroad Adjustment Board to set aside the considered judgment of the officers of the carrier, who are responsible for the safe operation of the railroad and the safety of the employes and who passed on the evidence in this case and approved the discipline.

The carrier submits that in assessing the discipline in this case, it did not act in bad faith, arbitrarily or without sufficient evidence or just cause; therefore, the Board should not question the propriety of the discipline and to sustain this claim would constitute an unwarranted encroachment on the power of the carrier to assess discipline.

Under the facts and circumstances presented in the foregoing, it is the carrier's position that Car Repairers Bachert and Henry had responsibility in that they overlooked and failed to connect the brake rod with the live lever on Erie 72665 on October 18, 1946, and that the discipline was warranted and not excessive. Further, there was no violation of the rules of the shop craft agreement by the carrier; therefore, the claim is without merit and the carrier requests the Board to so find and deny the claim in its entirety.

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 in this case warrants a finding of unjust suspension of the two carmen.

The investigations show that Foreman Billig, who assigned Carmen Henry and Bachert to perform repairs on the car or advised them of the other work to be performed before they had completed their work on the car in question was, as a result of the investigations, given a reprimand.

It was found that main responsibility rested on another supervisor and disciplinary action was taken.

Under all the circumstances cited in the record, discipline to Carmen Henry and Bachert should be no more severe than that applied to Billig—a reprimand.

Both of the carmen, like Foreman Billig, had long and good records of employment with the company.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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