

Award No. 1222

Docket No. 1134

2-LV-CM-'48

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 EMPLOYEES'
DEPARTMENT, A. F. of L. (CARMEN)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Car Inspector Charles Kerschner was unjustly deprived of his service rights on July 28, 29, 30, 31, and August 1, 1946, and that accordingly the carrier be ordered to reimburse him for said time lost, including the clearance of his service record.

EMPLOYEES' STATEMENT OF FACTS: Charles Kerschner, herein-after referred to as the claimant has been employed by the company since September 20, 1922, at Allentown, Pennsylvania and was regular assigned as a car inspector at Allentown from 7:00 A. M. to 3:00 P. M. six days per week at the time he was removed from service for five days July 28, 29, 30, 31, and August 1, 1946.

On May 29, 1946, the claimant was required to submit to a question and answer investigation and a copy of same is submitted and identified as Exhibit A.

The claimant was notified by Superintendent C. L. Patterson that he would be suspended for a period of five working days. Copy of same is submitted and identified as Exhibit B.

On July 12, 1946, the claimant was verbally informed by Car Leader Milton Keiser that he would be suspended for a period of five working days effective July 28, 1946.

Depriving this claimant of his rights to work his regular assignment for five 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 and which is confirmed by letter to the undersigned by Mr. Wagner dated January 17, 1947, copy of which is submitted and identified as Exhibit C.

POSITION OF EMPLOYEES: 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, has been violated the case shall be taken * * *"

About five miles west of the point where the journal on this car burned off, causing the accident, the box was observed blazing by a Reading Company crew, who signaled this information to the train crew riding on the rear of the train, but the train was not brought to a stop before the accident occurred. As a result of this accident, which caused derailment of fifteen cars in the train, approximately 700 feet of ties west of the derailment had to be renewed on account of the ends chewed off; approximately 700 feet of track were completely torn up, with about 200 feet of No. 1 track knocked out of line about three feet, with eight of the cars fouling No. 1 track cross-wise of No. 2 track and No. 1 track. The damage, as a result of this accident, was \$19,614.

We have here the case of a man employed as a car inspector, whose duties require him to inspect cars to permit their safe movement over the road, and because of his failure properly to perform his work, a very serious and costly accident resulted. The evidence of his responsibility is borne out by the fact that all other journals on the cars of this train, including the car responsible for this accident, performed satisfactorily, except the one journal which he failed to inspect and service properly to avoid its failure enroute.

The railroad management has a very definite responsibility in supervising matters of this kind, and where employees fail to perform their duties properly, must take such precautionary measures in the form of discipline that will insure the work of employees being properly performed for the safety of the railroad and the traveling public. In this case, an accident more serious than did occur could have resulted, for when this derailment blocked the parallel track, it could just as well have been directly in the path of a passenger train, which would have caused derailment of such a train with serious fatalities. It is the judgment of the responsible officers of this railroad that such failures on the part of car inspectors cannot be passed without recognizing their obligation to insure safety in the operation of the railroad and, in an accident of such serious proportions which existed in this case, it was necessary that discipline be imposed to impress upon this individual his responsibility for a proper performance of his work in the future and as an example to other employees, to insure greater care on their part.

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.

In this case there is not the direct evidence of guilt on the part of the employe accused to warrant a finding that he had been justly treated by the carrier in the application of discipline by suspension.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of January, 1948.