

Award No. 1551

Docket No. 1462

2-CofG-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the controlling agreement, Car Oiler George Hardwick was both unjustly suspended on June 4, 1951 and discharged from the service on June 8, 1951.

2. That accordingly, the carrier be ordered to compensate the aforesaid employe for all wages lost as the result of said unjust suspension and discharge.

EMPLOYES' STATEMENT OF FACTS: George Hardwick, hereinafter referred to as the claimant, has been employed by the carrier as helper and/or car oiler at Savannah, Georgia since October 1, 1923, and his regularly assigned hours were from 8:00 A.M. to 4:00 P.M., Monday through Friday, when he was held out of service on June 4, 1951, when the claimant received formal notice from General Foreman J. D. Draughon that he was being held out of service pending investigation in connection with delay to Savannah Division passenger train No. 3 which departed at 9:30 P.M., May 31, 1951 due to alleged improper attention to journal boxes on C. of Ga. Baggage Car No. 401, a copy of said notice is submitted and identified as Exhibit A.

On June 6, 1951 the claimant was given an investigation, a copy of which is submitted and identified as Exhibit B.

On June 8, 1951 the claimant received notice of his dismissal from service, a copy of which is submitted and identified as Exhibit C.

It is pointed out that the claimant was available, able and willing to be restored to service at all times between June 4, 1951 and July 12, 1951, the date he was returned to service. This dispute has been handled in accordance with the provisions of the agreement effective September 1, 1949, as subsequently amended, with the proper officers of the carrier including the highest designated carrier officer with whom such matters may be handled with the result that this officer has declined to make satisfactory adjustment of the dispute.

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 carmen of System Federation No. 26 contend carrier unjustly suspended Car Oiler George Hardwick on June 4, 1951 and unjustly discharged him on June 8, 1951. They ask that he be compensated for all wages lost as a result thereof.

On June 4, 1951 carrier notified Hardwick that it was charging him as follows: "you failed to properly pack the journal boxes on Baggage Car 401, on May 31, 1951, causing a delay to Passenger Train No. 3. You failed to put sufficient amount of dope in the boxes to keep them from running hot." In the same letter it also notified him that he was being held out of service pending an investigation which was set for June 6, 1951 at 10:00 A. M.

After a hearing carrier found claimant guilty of negligently packing the boxes and dismissed him from its service. However, claimant was returned to service on July 12, 1951 so the claim actually involves the alleged unjust suspension pending an investigation and a suspension thereafter from June 8, 1951 to July 12, 1951.

As to the contention that claimant was unjustly suspended pending an investigation Rule 35 of the parties' effective agreement, insofar as it relates to that subject, provides:

"Suspension in proper cases (the proper case is one where leaving the man in service pending an investigation would endanger the employee or his fellow employees or company interest) pending a hearing, . . . shall not be deemed a violation of this rule."

Under this agreed to definition of what is a proper case for suspension, pending an investigation, we find carrier was not justified in doing so here and that part of the claim must be sustained. This is particularly true in view of carrier's statement of what it did on two previous occasions when apparently similar acts were committed by claimant. On each of those occasions he was reprimanded but left on duty.

Claimant had a fair and impartial hearing within the contemplation of Rule 35 of the parties' effective agreement. The rule does not contemplate that neutrals shall conduct such hearings nor that the officer presiding at the hearing may not ask the questions. In regard to the evidence adduced at the hearing the contention is made that the statements of the members of the crew of train No. 3 should not have been received in evidence because the individuals making such statements were not present to be cross-examined. While it would have been desirable to have had these men present their absence does not prevent their statements from being received and considered. The form in which evidence is received only goes to the weight to be given thereto. Technical rules of evidence applying in courts of law are not applicable to evidence adduced at such hearings. However, the letter of Road Foreman of Engines J. G. Parker referred to by carrier, which related to what Parker said he observed and did at Millen, Georgia, on the night of May 31, 1951, when train No. 3 stopped there, not having been offered and received in evidence at the hearing could not be considered by carrier in determining the guilt or innocence of claimant. Only evidence adduced at the hearing can be considered for that purpose.

The evidence adduced at the hearing presented a highly controverted factual situation. There is evidence to support carrier's finding and in view thereof we cannot say it acted in an arbitrary, capricious or unreasonable manner in finding claimant guilty of the charges which it had made against him. In other words, we cannot say it was clearly wrong in finding him guilty.

In view of claimant having been restored to service on July 12, 1951 it leaves no question here of excessive or unreasonable punishment as the period of time he was off duty would not have been an unreasonable time to have suspended him from service. In this respect we wish to state the record does not establish claimant's guilt of any similar conduct in relation to Pullman car Lake Cadillac or Central of Georgia car 491.

AWARD

Claim that Car Oiler Hardwick was unjustly suspended on June 4, 1951 pending an investigation and that he be compensated for all wages lost as a result thereof sustained but claim that he was unjustly discharged (in effect suspended from June 8, 1951 to July 12, 1951 when restored to service) and for compensation for all wages lost as the result thereof denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1952.