

Award No. 1716

Docket No. 1606

2-UP-CM-53

**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. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF THE EMPLOYEES: That under the current agreement Car Inspectors George O. Sauers and Joseph M. Milestone were unjustly discharged from service April 16, 1951, and that the Carrier be ordered to reimburse them for time lost from said date to May 12, 1951 and May 14, 1951 respectively.

EMPLOYEES' STATEMENT OF FACTS: George O. Sauers has been employed as carman helper and carman by the carrier since August 31, 1942, and Joseph M. Milestone as carman apprentice and carman since April 27, 1927, and are hereinafter referred to as the claimants. At the time of their discharge they were regularly assigned as car inspectors from 8:00 A. M. to 4:00 P. M.

On April 8, 1951, while car Milw 13073 was en route to its destination, a side door fell off, striking Streamliner No. 105 near Paxton, Nebraska.

Paxton, Nebraska, is approximately 1500 miles from Los Angeles, and while en route from Los Angeles, the car passed through three Class A, two Class B, and five Class C inspection yards.

On April 12, 1951, the claimants were required to submit to question and answer investigations of charges of "failure to properly inspect side door of Milw 13073 on April 3, 1951", and a copy of each is submitted and identified as Exhibits A and A-1.

On April 16, 1951, the claimants received formal notices from Master Mechanic Weiss that they were discharged from the company's service, copy of each is submitted and identified as Exhibits B and B-1.

Request was duly made upon the carrier that these claimants be reinstated with seniority rights unimpaired and compensated for their wage loss. The carrier subsequently restored these claimants to service, Sauers on May 12, and Milestone on May 14, 1951 with seniority rights unimpaired but with claim for wage loss pending until December 3, 1951, when the highest designated carrier officer declined to compensate them for any loss of wage.

The agreement effective September 1, 1949, is controlling.

further negligence and disregard of instructions, which could result in even more disastrous consequences.

The carrier submits that the discipline was neither unjust nor unduly severe. It respectfully requests this Board not to overrule the considered judgment of management in this case nor to absolve the claimants of their responsibility by reimbursing them for time lost as requested by the employees.

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 employees 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.

This is a disciplinary proceeding involving Car Inspectors George O. Sauers and Joseph M. Milestone. The organization contends the claimants were unjustly dealt with when carrier discharged them from its service as of April 16, 1951. Claimants' difficulties grew out of their Class A inspection of empty Milwaukee car 13073 on April 2, 1951 at Los Angeles, California. This inspection was made during their regular tour of duty from 8:00 A. M. to 4:00 P. M. It was for the purpose of detecting and reporting any mechanical defects found on the car and to determine its suitability for being loaded. The inspection report indicated no mechanical defects of any kind and it was O.K.'d. as suitable for loading. The car was thereafter loaded and, on April 4, 1951, moved out of Los Angeles en route to Chicago, Illinois, its point of destination. On April 8, 1951, while the loaded car was en route to its destination, a side door fell off of the north side thereof striking Streamliner, City of Portland, causing considerable damage thereto. This incident happened near Paxton, Nebraska.

Carrier charged claimants with: "failure to properly inspect side door of Car Milw 13073 on April 2, 1951." Hearings were had on these charges on April 12, 1951. Carrier found both claimants guilty and discharged them from its service as of April 16, 1951. However on May 14, 1951 carrier restored claimant Milestone to its service with his seniority rights unimpaired. It did the same for claimant Sauers on May 15, 1951. Consequently the claim actually involves the suspension of these men from the date of their discharge until they were again restored to service.

Carrier says the claim should not be considered because the organization took such a long time to appeal to this Board, that is, from December 3, 1951, when the claim was finally turned down on the property, to December 11, 1952, the date of its notice of intent to appeal to this Board. While the Railway Labor Act contemplates that disputes shall be handled in a prompt and orderly manner those who enacted it did not see fit to put a time limit therein within which an appeal must be taken. In the absence thereof we cannot deny a claim solely on that basis unless, because of such delay, injury or damage would be caused therefrom if the claim should be sustained. Nothing of that nature is here shown as the claim is for a fixed period of time which had terminated long before December 3, 1951.

Carrier brings into the record, in its ex parte submission, photostatic copies of "Home Shop" and "Loaded Car" cards. These were not produced and put in the hearing records of April 12, 1951. Carrier, and this Division, are limited to the facts brought out by both parties at the hearings in determining whether or not the employees carrier charged are guilty or innocent of the charges which it has made against them. Carrier should not close a disciplinary hearing until it has adduced all of the evidence it intends to

use. Once such a hearing is closed the record is complete and the evidence adduced thereat is the only evidence properly before us in considering the correctness of carrier's decision based thereon. See Awards 1111, 1551 and 1694 of this Division. However, it should be remembered the mechanical inspection report made on this car at North Platte, Nebraska, on April 8, 1951 by a staff representative was read into the record without any objection as to its form, nature or character. Whatever rights if any, the claimants had to object to its being received in this form were thereby waived. This report contained information as to the "Home Shop" card and its contents.

The "Home Shop" card is a card form prescribed by the regulations of the A. A. R. and is used when the mechanical defects on a car are such that they render it unsuitable for a continuation in service. Once so tagged it is ordinarily not supposed to be loaded, but should be sent home for repairs.

Based on the facts adduced at both hearings, which for all practical purposes were the same, carrier could properly find that a car inspector on Central of New Jersey Railroad did, on March 5, 1951, place a "Home Shop" card on Milwaukee car 13073; that on this card was written "Defective doors on the left side"; that the defect consisted of a bad crack in the welds of the door post and side sills; and that this defect existed and the "Home Shop" card was on this car when claimants inspected it on April 2, 1951. Such being true, claimants' failure to observe either, when making their Class A inspection, evidenced a failure on their part to exercise reasonable care in the performance of their duties.

A point is made of the fact that after this car was loaded it traveled from Los Angeles to Paxton, Nebraska, a distance of some 1500 miles, before the door fell off causing the accident and that, in traveling this distance, it passed through 7 Class C, 2 Class B, and 3 Class A inspection points without any evidence of this condition being discovered by anyone making such inspections at these points. This appears to be true but that fact does not materially help claimants for a dereliction of duty of an employe, or employes, does not excuse or exonerate any other employe who has been guilty of the same thing. Every employe is responsible for the performance of his duties and, if he fails to properly perform them, cannot excuse himself from his responsibility for such failure merely because others may have been guilty of the same fault.

A point is also made of the fact that the door was undoubtedly caused to fall off by reason of the load in the car bumping against it, the load having shifted. It appears the claimants inspected the car while empty and did not again check it after it had been loaded to see if the door was properly protected against the load shifting, if it should do so enroute. If the claimants had been charged with causing the accident this might be material but that is not the charge here made. The charge is that they failed to properly inspect the side door of Car Milwaukee 13073 and discover the defect then existing in the appurtenances thereto.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1953.