

Award No. 2051

Docket No. 1884

2-UP-CM.'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Car Inspector Paul M. Subic was unjustly discharged from the service on June 21, 1954 and that accordingly the Carrier be ordered to reinstate him to all service rights with compensation for all wage losses retroactive to aforesaid date in accordance with the current agreement.

EMPLOYES' STATEMENT OF FACTS: The Union Pacific Railroad Company, hereinafter referred to as the carrier, employed Paul M. Subic, hereinafter referred to as the claimant, at Rock Springs, Wyoming on October 12, 1942 and at the time of his dismissal he was regularly assigned on the second shift at Green River, Wyoming.

As a result of an accident which occurred approximately 120 miles west of Green River, twenty-seven (27) cars were derailed, piled up, and damaged to the extent that sixteen (16) of the cars were cut up and scrapped at the point of derailment. The carrier made an ex parte inspection following this accident which resulted in the claimant being required to submit to a question and answer investigation on June 7, 1954 on the charges stipulated in letter identified as employees' Exhibit 1. A copy of the transcript thereof is submitted herewith and identified as employees' Exhibit 2.

The carrier made the election on June 21, 1954, to notify the claimant, in writing, through Master Mechanic Myers that he was dismissed from the company's service. A copy of notice is submitted herewith and identified as employees' Exhibit 3.

Request was duly made upon the carrier that the claimant be reinstated to service with seniority rights unimpaired and compensated for his wage loss, which request was denied. The carrier offered to reinstate the claimant on a leniency basis without pay for lost time. The claimant has been agreeable to his reinstatement with the question of pay for wage loss pending final adjudication, but this the carrier has refused to do.

This dispute has been handled up to and including the highest designated officer of the carrier who has declined to adjust it.

The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that in accordance with Rule 35 captioned "Grievances", in pertinent part reading:

"Should any employe subject to this agreement believe he has been unjustly dealt with, or any provisions of this agreement have been violated, the case shall be taken to . . ."

this claimant was an employe subject to the agreement, that he believed he had been unjustly dealt with by the carrier, and that the said agreement was violated by the carrier when he was dismissed from the service on June 21, 1954.

It is further submitted that the claimant was dismissed from the service without any bona fide cause whatever and without authority to do so under the terms of the agreement, particularly that part of Rule 37, reading:

"If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss . . ."

because the evidence adduced at the hearing completely fails to prove that the claimant was guilty of the general charge of improper inspection or that he had failed to detect and correct a cotter key that the carrier has assumed was defective at the time the car was inspected at Green River.

The mere fact that carrier's officers elected to hold this employe responsible for some alleged failure in the performance of his duties does not convict him of neglecting to perform his duties, and does not warrant this carrier imposing any loss of time upon him.

Nothing whatever can be found in any reasoning or evidence advanced by the carrier which would even suggest that this claimant should be dismissed from the service or caused to suffer any wage loss whatever for the accident which occurred 120 miles away from his home point, and the Honorable Members of this Division are respectfully requested to sustain the claim.

CARRIER'S STATEMENT OF FACTS: On and prior to May 31, 1954, Claimant Paul M. Subic was employed by this carrier as a carman, having been first employed on October 12, 1942, as a carman helper.

On May 31, 1954, claimant was working as a car inspector at Green River, Wyoming and failed to properly inspect car LV 8030 which arrived at Green River in Train Ex. 1441 at 8:35 P.M.

Subsequently, claimant was charged with having made an improper inspection and hearing was held on June 7, 1954, at Green River, Wyoming. Evidence adduced at the hearing sustained the charge. On June 21, 1954, the claimant was advised that he was discharged from carrier's service.

POSITION OF CARRIER: The organization, in this dispute, challenges the right of the carrier to discharge Claimant Subic. The facts involved are not in dispute. The charge against Subic was supported by the evidence at the investigation and he was properly discharged.

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 claimant of his responsibility by reimbursing him for time lost as requested by the employes.

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 transcript of the investigation reveals that the claimant car inspector gave a class "A" inspection to the 14th head car of a westbound freight train at Green River, Wyoming, May 31, 1954.

About 120 miles west of Green River a derailment occurred, caused by a hanger pin losing out of a "U" type hanger which permitted the beam to drop and lodge in a heel block of a switch.

The claimant admitted that the cotter key which held the pin in place would have had to come out to permit the pin to work out. Claimant further stated that the cause of the cotter key coming out would have been because it wasn't spread enough, could have been rusted or could have been a safety cotter with safety part broken out.

Class "A" inspections require that special attention be given to brake hanger pins and cotter keys.

Cotter keys, as used to hold the brake hanger pins in place, are not under stress.

It is our opinion that the carrier did not act arbitrarily in the instant case. The evidence, factual and circumstantial, indicates that if a proper inspection had been made and had the cotter key been in place, in good condition and properly spread that the hanger pin could not have worked out prior to the derailment.

The carrier has indicated its willingness to put the claimant back to work without pay for time lost. Such indicates to this Board that the carrier now considers the claimant qualified and acceptable insofar as measuring up to the responsibilities of the position. To further hold the claimant out of service would serve no legitimate purpose. He should be reinstated with seniority rights unimpaired, but without compensation for wage loss, if any.

AWARD

Claim disposed of in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1956.