

Award No. 2209

Docket No. 1984

2-L&N-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen (car Inspector), Frank Lane was unjustly dismissed from the service of the Carrier effective at the close of his shift on March 21, 1954.
2. That accordingly the Carrier be ordered to restore carman Lane to service and compensate him for all lost subsequent to March 21, 1954.

EMPLOYEES' STATEMENT OF FACTS: Carman Frank Lane, hereinafter referred to as the claimant, was first employed by the Louisville and Nashville Railroad Company, hereinafter referred to as the carrier, as a carman helper on May 28, 1923, at Boyles, Alabama. Claimant resigned from the service of the carrier at Boyles, Alabama, on December 28, 1944.

Claimant was reemployed by the carrier on January 25, 1945, at Sibert Yards, Mobile, Alabama. At the time of his dismissal from the service on March 21, 1954, claimant was regularly employed as a car inspector on the 3:00 P. M. to 11:00 P. M. shift Thursday through Monday, rest days Tuesday and Wednesday. Copy of the claimant's service record is submitted herewith and identified as Exhibit A.

The carrier's general foreman on February 8, 1954, charged the claimant with failing to detect and shop Car AOCX 1240 for thin and chipped flange, Location R-2, west side, further alleging that this car contributed to derailment of Train 71 at Ocean Springs, February 2, 1954. A copy of the charges against the claimant is submitted herewith, identified as Exhibit B.

Formal investigation of the charges was scheduled for February 15, 1954, and the investigation was held on that date. Copy of the transcript of investigation is submitted herewith and identified as Exhibit C.

Prior to the beginning of his shift on March 22, 1954, the claimant was notified by the local officials of the carrier that he had been dismissed from

Mr. Lane further failed to meet his responsibility by failing to make proper inspection of the cars after they had been made up in train No. 71. It is evident that he had time to make proper inspection of the cars received from connecting line and placed in train No. 71 as Inspector Faggard, who made inspection on east side, testified he had ample time to inspect all cars on No. 71 to the satisfaction of the supervisors. Knowing he had not properly inspected the cars Mr. Lane should have held the cut until this was done. And failing to do this, he certainly should have notified his superior so that arrangements could be made to have cars given proper inspection before they were permitted to leave the terminal.

This is not the case of an inspector in the proper performance of his duties inadvertently overlooking a defect. To the contrary, Inspector Lane knowingly failed to give proper inspection to car in question, and then failed to notify his superior that inspection had not been made, all in violation of instructions which he admitted he had received and understood.

And this was not the first time he had been derelict in the performance of his duties. On April 9, 1950, car LV 75600 in train No. 73 had journal to run hot and wring off, causing derailment at Ocean Springs. In the investigation covering that case Inspector Lane admitted that he failed to raise box lids and inspect journals of cars in train No. 73 before departure from Mobile, in violation of instructions. That case against Carman Lane was passed with a personal reprimand.

In conclusion, carrier reiterates that the evidence adduced at the investigation fully supports the charges against Carman Lane, that he knowingly failed to meet his responsibilities as car inspector which resulted in a serious derailment, and that in all the circumstances his dismissal was entirely justified and should stand. In this connection attention is invited to the following excerpts from awards of this Division:

"It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

(Second Division Award 1323.)

"This Board is loathe to interfere in cases of discipline if there is any reasonable grounds upon which it can be justified." (Second

Division Award 1109.)

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.

Claimant was assigned as a car inspector Thursday through Monday, 3:00 P. M. to 11:00 P. M., at Sibert Yards, Mobile, Alabama. On February 8, 1954, he was charged with failure to detect a thin and chipped flange which contributed to a derailment at Ocean Springs on February 2, 1954. An investigation was held on February 15, 1954 and on March 21, 1954, he was dismissed from the service. The organization contends that the dismissal was unjust.

The evidence shows that claimant was assigned to inspect the west side of the cut of cars which included Car AOCX 1240 with the defective wheel. Claimant says that before he got to this car, a switch engine came and hung on to them and that he did not inspect as carefully as he should have because he expected them to move out. Claimant reported to no one that he had not carefully inspected these cars although he admits he had been instructed to give them a careful inspection. The inspector on the east side of the cut of cars says ample time to inspect was provided.

The evidence shows that the flange on the wheel was so thin that it should have been condemned. There was evidence that the flange was badly chipped and that it should have been condemned for that reason. The evidence is that it could easily have been detected unless it was behind a brake shoe or at the bottom of the wheel on the rail. Even if one of the latter contingencies existed, claimant should have observed the thin flange or, if he lacked time to complete his inspection, to report it to his superiors. The failure of claimant was not that he merely failed to see a defective flange but that he did not look at all. That the defects noted caused the derailment is not questioned. The resulting derailment delayed the train nine (9) hours and cost the carrier \$2,204.68 in repair work alone. The record shows that claimant failed to properly perform his duty as an inspector in 1950 which likewise resulted in a derailment. He was let off with a reprimand on that occasion.

The duties of a car inspector are important. They deal with the lives of employes and the public, and secondarily, the property of the carrier. Inspection of locomotives and cars is a safety provision upon which the carrier must rely. The contention of the claimant that he failed to inspect because he had no opportunity to do so cannot be accepted. If for any reason he could not make the inspection, his duty was to hold the train or report the failure to inspect to his superiors. He did not do either. In either event he was guilty of a serious violation of duty. The contention that carrier discourages the use of a blue flag is not a defense. If it was too dangerous to make the inspection, his duty was to report that fact to his superiors—not to sit by and permit uninspected cars to be sent out in a train. His dereliction of duty was established by the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.