

Award No. 2290

Docket No. 2072

2-IC-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current agreement Car Inspector John R. Keith was unjustly dismissed from the service at the close of his shift on May 3, 1955.

(2) That accordingly the Carrier be ordered to restore this employe to service with all rights unimpaired, with compensation for all time lost since May 3, 1955.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector John R. Keith, hereinafter referred to as the claimant, was employed by the carrier as a carman helper at Markham Yard, Chicago, Illinois, on July 26, 1946. He was later upgraded to a carman for four (4) years and established seniority as a carman on July 20, 1950.

The general car foreman summoned the claimant to appear for an investigation at 2:00 P. M. April 28, 1955, on charges of failing to do his work in the proper manner and eating supper before the proper time which is affirmed by letter dated April 27, 1955, copy of which is submitted herewith and identified as Exhibit A.

The investigation was held as scheduled and a copy of the transcript of the evidence furnished the local committee by the carrier is submitted herewith and identified as Exhibit B.

The local committee has protested the accuracy and completeness of the transcript of evidence.

The carrier dismissed the claimant from the service of the carrier, effective with the end of the shift on May 3, 1955, and this is affirmed by letter dated May 3, 1955, copy of which is submitted herewith and identified as Exhibit C.

dure and deliberately evaded his duties and responsibilities between the hour of 5:35 P. M. and 6:15 P. M. on April 26, 1955.

Part 2 of the claim should be denied since claimant was offered reinstatement on two separate occasions, and he refused to accept them. He has suffered no wage loss since he has been employed in outside industry since May, 1951, in addition to working an additional position with another carrier since July, 1955.

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.

It is contended Car Inspector John R. Keith was unjustly dismissed from carrier's service at the end of his shift on Tuesday, May 3, 1955. Because of that fact he asks to be restored to carrier's service with all his rights unimpaired and compensated for all time lost.

Claimant was originally employed by carrier on July 26, 1946 at its Markham Yards in Chicago. On Wednesday, April 27, 1955, claimant was notified by M. A. Greear, carrier's general car foreman, that there would be an investigation in his office on Thursday afternoon, April 28, 1955, concerning claimant's failure to properly perform his work while inspecting cars in "D" Yard at Markham Yards while working on his shift from 3:00 P. M. to 11:00 P. M. (CST) on Tuesday, April 26, 1955. As a result of the investigation claimant was dismissed from carrier's service.

The organization protests the accuracy and completeness of the transcript of the investigation. It does not specifically point out the deficiencies complained of. The transcript is certified to by the affidavit of the stenographer who took it that it "is a true and correct transcript of the testimony" taken by him of the investigation. In the absence of any sufficient showing to the contrary we must accept such certification as correct.

It is also contended the evidence adduced at the investigation is neither sufficient to sustain the charges made nor justify the discipline imposed.

The evidence adduced at the investigation shows that the first thing claimant did, after reporting in, was to team up with Car Inspector Roger C. Barbero and inspect eighty-two (82) cars in Belt train on track 8, working from north to south. When claimant and Barbero finished inspecting this train they walked back to a shanty at the north end. The usual procedure for inspecting a train is as follows: first, put up a blue flag and proceed to inspect to the end of the cars; then call the leadman by telephone, which is in the yard, and O.K. the train so he can remove the blue flag; and then, if another train is available to inspect on the way back, the leadman can so instruct and the team can work it coming back, the leadman placing the blue flag thereon to protect them while they are doing so. It will be observed that claimant and Barbero failed to follow this procedure.

Shortly after claimant and Barbero started inspecting the train on track 8 a train of sixty-six (66) cars of auto parts was placed on track 11 which, if claimant and Barbero had called in, they could have been instructed to and inspected on the way back, as it was light enough for them to have done so. As a result of not doing so the inspection of these cars was considerably delayed and the movement thereof in transit likewise. This evidence shows

a failure on the part of claimant to perform these duties in a proper manner and caused delay in transit of a highly competitive class of business.

But does this single neglect of duty justify dismissal? There is no evidence that claimant was ever guilty of such conduct prior thereto. We think it unreasonable, under the circumstances, and that a reasonable period of suspension is all that would have been justified. It has now been more than a year and five months that claimant has been out of carrier's service because of the action it took. This is more than what would normally be reasonable under the circumstances here established on which action was taken, but, in view of claimant's refusal to remain in or return to carrier's service, when opportunities were given him to do so, we find he is not entitled to be compensated for any of the time he has been out of service.

We think claimant should be returned to carrier's service with all his rights fully restored but that all claim for compensation should be denied.

AWARD

Claim for restoration to service with all rights unimpaired sustained but claim for compensation for all time lost since May 3, 1955 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.