

Award No. 2371

Docket No. 2128

2-RDG-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. 109, RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier unjustly suspended Car Inspector Thomas P. McCaffrey for ten (10) working days, commencing on September 20, 1954.

2. That, accordingly, the Carrier be ordered to reimburse him for the ten (10) days lost time.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Thomas P. McCaffrey, hereinafter referred to as the claimant, entered the service of the Reading Company, hereinafter referred to as the carrier, as a car repairer helper in January, 1950, was promoted to car inspector in April, 1951, at which position he was working on September 6, 1954. The claimant was assigned to the 11:00 P. M. to 7:00 A. M. shift at Frankford Avenue, Port Richmond, Pennsylvania.

The claimant reported one (1) hour late on September 6, 1954, an assigned work day, and erroneously filled out his time card for eight (8) hours.

The carrier's car shop foreman notified the claimant, as a consequence of this minor and excusable error, that a hearing and investigation in connection with falsifying time card for September 6, 1954, will be held on September 8, 1954, at 9:30 A. M.

The hearing was held, as scheduled, and a copy of the transcript of hearing is submitted herewith and identified as Exhibit B.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

return and certainly carrier would be faced with a serious problem if it permitted employes to claim pay for time when they were not on duty as was attempted herein.

As evidence that Car Inspector McCaffrey was afforded a fair and impartial hearing under the provisions of Rule 34 (b), carrier submits that in the closing part of the testimony, in answer to the question "Has this hearing been held in a fair and impartial manner and in accordance with schedule requirements?" both McCaffrey and his representative, Mr. Curtin, answered "yes".

This is a discipline case wherein the Carmen's Brotherhood of System Federation No. 109 requests the Second Division of the National Railroad Adjustment Board to set aside the considered judgment of the officers of the carrier, who are responsible for the proper and efficient operation of the railroad and who passed on the evidence and approved the discipline in this case, and substitute therefor the judgment of the carmen's organization.

Carrier submits, and the Board has so held, that the assessment of discipline is a matter within the discretion of the carrier. In the instant case there was no abuse of discretion in the suspension of Car Inspector McCaffrey. Such action was warranted and justified, and the discipline was not assessed arbitrarily, capriciously or without just cause and your Board has previously held that where the carrier has not acted arbitrarily, unreasonably or without just cause, the judgment of the Board would not be substituted for that of the carrier.

Under the factual evidence presented hereinbefore, it is the carrier's position that claimant was afforded a fair and impartial hearing in accordance with the requirements of Rule 34 (b) of the shop craft agreement. The record discloses and claimant admits reporting late for duty on the date in question contrary to the meaning and intent of Rule 22 and submitting a time return for eight hours' pay despite the fact he was on duty only six hours and fifty minutes, in view of which carrier maintains his suspension was warranted and justified. The propriety of the discipline should not be questioned by the Board, as it was not assessed arbitrarily or without just cause. Furthermore, it must be recognized that it is necessary that discipline be administered in such manner that will bring about the enforcement of effective rules and regulations in order to insure proper, efficient and safe operation. There is no long history of continuous employment to be considered here and the record does not contain any evidence and there are no mitigating circumstances that merit special consideration or any change in the discipline assessed. Carrier, therefore, requests that the claim as submitted to the Board be denied in its entirety.

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 organization contends carrier unjustly suspended Car Inspector Thomas P. McCaffrey for a period of ten (10) working days commencing on Monday, September 20, 1954. In view thereof it is asked that we direct carrier to compensate claimant for the ten (10) days lost by reason thereof.

In this respect Rule 34 (b) of the parties' controlling agreement provides:

“* * * If it is found that an employe has been unjustly suspended * * * from the service, such employe shall be * * * compensated for wage loss, if any, resulting from said suspension * * *.”

Carrier charged claimant “with falsifying (his) time card September 6, 1954 and asking for remuneration beyond services rendered, to determine your responsibility, if any, in this matter.”

A hearing was held on these charges on Wednesday, September 8, 1954 before C. E. Kline, carrier's foreman of Car Shops at Port Richmond. The evidence adduced at the hearing discloses that claimant had worked for carrier since January 1950; that he had worked as a car inspector since April 1951; that at the time of the hearing he held a position of car inspector at Frankford Avenue, Port Richmond, Pennsylvania; that on Monday, September 6, 1954 he reported for work about one (1) hour and ten (10) minutes late; and that he made out his time card for a full eight (8) hours of work. At the hearing, when given an opportunity to do so, claimant corrected his time card to show seven (7) hours of work, admitting he had made a mistake in doing so but claiming it was innocently done. No previous incident of this kind on the part of claimant was shown. Under these circumstances we think the penalty of ten (10) days' suspension is unreasonable, unwarranted and that a reprimand as to what would happen if another offense of this kind occurred would have been proper.

Carrier recognized this fact when it states in rebuttal that:

“When it is felt an error has been made unintentionally, it is usually a matter for discussion between the employe and his immediate supervisor before any thought is given to any formal disciplinary proceedings.”

It then goes on to state that the mistake in this case was deliberate and, in support thereof, sets forth a statement by Assistant Foreman Car Inspector D. P. Wilson as follows:

“In reply to your request for information surrounding the investigation held with Thomas P. McCaffrey in connection with his falsifying his time card on September 6, 1954.

After reading the minutes of the investigation, it is noted that all the circumstances surrounding the case were not brought out in the testimony and I wish to make a statement that on the night in question and for which Mr. McCaffrey was brought in for a hearing and investigation, I personally instructed him in the proper method of filling out a time card and personally directed him to conform to the time which he actually worked on this date.

In fact, the matter of properly making out a time card was discussed with Inspector McCaffrey twice on this date. His reaction to my instructions were arrogant and evasive. He did not at any time properly change his time card to conform with the time worked until the day of the hearing and this was the reason I called it to the attention of Foreman Kline for his further action.

This is a true and accurate statement of the circumstances surrounding this particular case.”

By its own terms this statement discloses the contents thereof were not disclosed at the hearing. It should be remembered that carrier is bound by, and limited to, what it adduces at a hearing to justify its action taken thereon and cannot, subsequently thereto, fill in any deficiencies. We are likewise limited in the same manner on appeal. If what is contained in Wilson's statement had been brought out at the hearing certainly it would

have justified carrier's action and warranted the discipline imposed. In the absence thereof we are of the opinion the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1956.