

Award No. 3628

Docket No. 3220

2-T&NO-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Promoted Carman Helper Charlie Ransom was unjustly discharged from service on May 5, 1958.

2. That accordingly the Carrier be ordered to restore this employe to service with all seniority and service rights unimpaired and with compensation for all time lost retroactive to and including May 6, 1958.

EMPLOYEES' STATEMENT OF FACTS: Promoted Carman Helper Charlie Ransom, hereinafter referred to as the claimant, had a regular assignment of 7:00 A. M. to 3:00 P. M., Saturday and Sunday — 11:00 P. M. to 7:00 A. M., Monday and 3:00 P. M. to 11:00 P. M., Tuesday and Wednesday as car inspector in the Galveston Train Yards. During the claimant's assignment Sunday, April 13, 1958, inbound Train No. 221 arrived Galveston Train Yards at 9:30 A. M. The claimant made inspection of the cars in the train and found five (5) cars that needed repairs and made the repairs on WAB 85004 by replacing a new coupler cross key retainer cotter key — WAB 86596, placed a new brake shoe key — RI 39295, placed a new brake shoe — NP 17715, placed a new brake shoe and SL&SF 147261, placed a new brake shoe. These cars were switched out of inbound train No. 221 and placed in hold track X-2 just opposite the car inspector locker room and office and the cars remained in the hold track from dates April 13 through April 18, 1958.

On April 18, 1958, the carrier's Traveling Accountant F. N. Toler, arrived at the office of Foreman DeLong and requested that he be given the car repair bills on the cars that the claimant made repairs on, April 13, 1958.

at which time General Chairman E. C. Wolff and Superintendent L. McDonald talked to Mr. Ransom at great length and asked him to mend his ways and give the carrier honest and reliable service. He promised he would do so and an agreement was reached reinstating him on a leniency basis. The ink was hardly dry on the reinstatement agreement when the instant incident occurred. Such flagrant action is incompatible with employee-employer relations. For these reasons, we say leniency is not justified.

The carrier submits Carman C. Ransom should not be reinstated on any basis and he is acting unreasonable and in bad faith by requesting it. Should the Board feel otherwise, and erroneously reinstate Mr. Ransom with pay, notwithstanding the carrier's position in this matter, then and in that event, the carrier should be allowed to deduct the amount of any compensation earned in outside employment during the period in question. In this connection we refer to the current agreement, Rule 34 (copy of which is on file with your Board) and Second Division Award No. 1638, which rule on this particular point.

The carrier asserts that the employee's claim is without merit and we respectfully request your Honorable Board to so decide.

FINDINGS: The Second Division of the Adjustment Board, based upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was dismissed from service after a hearing on the charge of falsely reporting that he had made repairs on three foreign line freight cars while employed as a carman in the carrier's Galveston, Texas train yard on April 13, 1958. The organization maintains that the evidence adduced at the hearing did not support the charge.

Three witnesses testified at the hearing that on April 18, 1958, they inspected the cars in question which had remained at the Galveston train yards for five days and found no evidence of the repairs claimant said he had made on April 13 and in which he insisted he had employed new materials. In addition to insisting that he had made the repairs, claimant, who was his sole witness at the hearing, suggested that some other employees who were antagonistic to him may have replaced the new materials he installed with worn out parts for the purpose of framing him and thus procuring his discharge.

The fairness of the hearing is not questioned and the primary question before us relates to the sufficiency of the evidence to sustain the charge.

We have carefully examined the transcript of the hearing and are of the opinion that the evidence produced was sufficient to sustain the carrier's finding of guilt in this case, and we are unable to find that the carrier acted without just and sufficient cause. The claimant's position that the foreman inspected the repairs and approved them is without support in 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 9th day of January 1961.