

Award No. 4151

Docket No. 3920

2-SOU-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Carmen R. R. Helton was unjustly removed and held out of service from March 7 to March 23, 1960, causing Mr. Helton to lose 11 days or 88 hours' pay.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe for time lost while improperly held out of service March 7 — March 23, 1960.

EMPLOYEES' STATEMENT OF FACTS: Carman R. R. Helton, hereinafter referred to as claimant is regularly employed by the Southern Railway Co., hereinafter referred to as carrier, as a carman at Knoxville, Tennessee and assigned as car inspector at carrier's Passenger Station, 3:00 P. M. to 11:00 P. M. 5 days per week.

Following the close of shift at 11:00 P. M. on March 7, 1960 and prior to beginning of shift at 3:00 P. M. on March 8, 1960, claimant along with carman R. L. Seymour was suspended from the service of the carrier and charged as follows:

"They are charged with failing to properly perform their duties as Car Inspectors, by not making proper air test on Train 27, Monday March 7, 1960, allowing train to depart from Knoxville with brakes not working on two rear cars."

Investigation was conducted on the above charge at 10:15 A. M. March 11, 1960.

Following the investigation held March 11, 1960, Carman R. L. Seymour was reinstated to the service and paid for all time lost, but the claimant was held out of service until March 23, 1960, at which time he was reinstated to service with unimpaired rights, but without pay for time lost.

With the evidence as we find it in our examination of the entire record it cannot be said the action of the respondent in dismissing the complainant from its service was arbitrary, capricious or without cause."

The evidence of record is clear that decisions of the courts and the National Railroad Adjustment Board fully support carrier's disciplinary action against Car Inspector and Repairer Helton.

CONCLUSION: Carrier has shown that:

- (1) The effective shop crafts' agreement was complied with.
- (2) Claimant Helton failed to properly perform his assigned duties. He was derelict and remiss in performing his duties and assuming his responsibilities as car inspector and repairer. He did not do what he was paid by the company to do. Mr. Helton was therefore removed and held out of service for just and sufficient cause and does not have a contract right to be paid the compensation here demanded on his behalf by the Brotherhood.
- (3) Decisions of the courts and the National Railroad Adjustment Board fully support carrier's action.

Car Inspector and Repairer Helton not having a contract right to be paid the sum here demanded on his behalf by the Brotherhood, the Board cannot do other than make a denial award.

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.

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

Coach Inspectors Seymour and Helton were charged with "failing to properly perform their duties as Car Inspectors, by not making proper air test on Train 27, * * * allowing train to depart from Knoxville with brakes not working on two rear cars." They were jointly responsible for the inspection. But although the Carrier disciplined Claimant Helton, it found the evidence insufficient to justify disciplinary action against Inspector Seymour.

The incident involved the last four cars in the train, consisting of two coaches followed by two Pullmans. When detached from Train 27 at Oakdale to be added to Train 2, the yard engine attached to the rear of the last Pullman could not move them because the brakes on the two coaches would not release. Upon inspection the air train line, which carries 90 pounds pressure to release the brakes, and the air signal line, which carries only 30 pounds pressure were found to be crossed between the last coach and the first Pullman. It should be impossible to make that mistake; the record shows that it was very difficult, and the foreman of car inspectors at Knoxville had never heard of its happening before.

The train was not cut between those cars at either Knoxville or Oakdale, and management apparently concluded, therefore, that it had occurred somewhere previously, and that the inspectors at Knoxville should have discovered it. But the evidence shows that when the train left Asheville, the last preceding inspection point, the lines were not crossed and the brakes were working properly. If that had not been true, three cars would have had brakes dragging, as there was a diner between the two Pullmans until the train reached Knoxville. The record indicates, therefore, that the lines became crossed some time after that. 3

At Knoxville Claimant made the brake test after the diner was taken out, and he and Inspector Seymour found all brakes operating except those on the last Pullman, the St. Johns River. Mr. Seymour testified: 11

"I made the statement to Mr. Helton that I guessed that the St. Johns River was overcharged by the yard engine, and I gently pulled a release rod and the brakes released, and Mr. Helton and I, both assuming that everything was O. K., he and I both threw up our lights to give the signal that the train was O. K."

He also testified that when the Pullmans left the station he looked at both of them to see that the brakes were released. The testimony of both inspectors showed that coaches were often found with overcharged brakes after movements by switch engine, and that it was established normal procedure, known to foremen, to release them by release rod. 5

The Carrier contends, however, that Claimant should not have relied upon the fact that the brakes released when the release rod was pulled, but should have closely examined the airline connections ahead, as was done at Oakdale. But the brakes released at Knoxville after what the record shows was normal procedure, and it was only after they failed to release at Oakdale that further inspection became necessary.

Mr. Seymour testified that it did not seem possible that the brakes on the two Pullmans could have operated without trouble between Knoxville and Oakdale with airlines crossed ahead of them. Claimant said it was possible but that he did not believe the lines were then crossed because there would not have been sufficient air to release the brakes.

It is undisputed that the brakes were released when the train left both Asheville and Knoxville, and that they continued to work properly until the train reached Oakdale. Under the circumstances the record indicates two things: First, that the lines were not crossed at those times, but somehow became so afterwards; Second, that if they were crossed when the inspection was made at Knoxville, and the failure to discover that fact constituted negligence, then both inspectors were equally guilty. If the evidence was insufficient to justify the discipline of Mr. Seymour, as it certainly appears to have been, it was equally insufficient to justify Claimant's discharge.

AWARD

Claim sustained. 5

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.