

Award No. 4225

Docket No. 3937

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 Carman C. E. Cassady was unjustly suspended April 23 and discharged from the Carrier's service May 9, 1960.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe for all time lost in the period April 23, 1960 — May 17, 1960 account the aforesaid unjust treatment.

EMPLOYEES STATEMENT OF FACTS: Carman C. E. Cassady, hereinafter referred to as the claimant, employed by the Southern Railway Co., hereinafter referred to as the carrier, at Atlanta, Georgia was taken out of service and charged with failure to properly service journal boxes on Car ATSF 31365 April 23, 1960.

On April 25, 1960 Carrier's Master Mechanic L. S. Presson, Jr. addressed the following letter to the Claimant:

"Atlanta, Ga., April 25, 1960.

REGISTERED — SPECIAL DELIVERY

Mr. C. E. Cassady
2032 Belten Drive NW, Apt. 2
Atlanta, Georgia.

Dear Sir:

On April 23, 1960, a preliminary investigation was held concerning charges against you of failure to properly service journal

assigned duties and assuming his responsibilities. There is clearly not any basis for the demand here made that he be paid for time lost.

(c) The principles of prior Board awards fully support carrier's action.

The Board, being guided by the evidence of record and the principles of its prior awards, cannot do other than make a denial award. It cannot substitute its judgment for that of carrier.

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.

The evidence at the hearing was sufficient to sustain the action taken. There was evidence that after claimant had completed his work the cars were moved some thirty-five car lengths to the south before the pads were found out of place in the south part of the journal boxes. There is no evidence of any rough car movement during this period.

It may perhaps be possible that such shifting of pads in the direction in which the car was moving might have been caused by the car movement, and that such movement might have affected only the four pads on claimant's side of the car, leaving those on the other side in perfect position; but that possibility is certainly not so strong that the hearing officer can be considered arbitrary, capricious, or in exercise of bias, prejudice or abuse of discretion for believing otherwise. Consequently, even if this Board were to weigh the evidence and determine preponderance the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.