

Award No. 4543

Docket No. 4492

2-SOU-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

**The Second Division consisted of the regular members and
in addition Referee P. M. Williams when award was rendered.**

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carmen N. V. Risch was improperly removed from service and deprived of his employment rights for 57 working days.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe for the 57 working days lost.

EMPLOYES' STATEMENT OF FACTS: Carman N. V. Risch, herein-after referred to as the claimant, employed by the carrier at Spencer, North Carolina, was taken out of service, charged with failure to properly inspect ATSF 274324 March 5, 1962.

Formal investigation was held March 12, 1962.

The claimant was orally notified he was being restored to service effective June 1, 1962. This dispute has been handled with the carrier's officers designated to handle such matters, in compliance with current agreement, all of whom have refused or declined to make satisfactory settlement.

The agreement effective March 1, 1962, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted the claimant was subject to the protection of the provisions of the aforesaid controlling agreement made in pursuance of the amended Railway Labor Act, particularly the terms of Rule 34, which reads in pertinent part:

"An employe will not be dismissed without just and sufficient cause or before a preliminary investigation, which shall be held immediately by the highest officer in charge at the point employed. If, after the preliminary investigation, the case is appealed, an investigation will be held within five days and if it is found that the

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.

Carrier employed the Claimant herein as a Car Inspector and Repairman at its Spencer (North Carolina) yards. The Carrier states that on March 5, 1962 a car with a broken carrier iron was not properly inspected by Claimant because the mentioned break was present and was missed by him. Subsequent to the inspection by Claimant, though 207 miles distant, the car in question was involved in a separation, which the record shows was caused by the broken carrier iron, resulting in a major wreck.

An investigation of Claimant's failure to properly inspect the car was held and it was determined that he had not properly performed his duties. Whereupon he was discharged. However, 57 days later he was restored to his position with seniority rights unimpaired.

The employes allege that Claimant's dismissal was the result of the Carrier's arbitrary exercise of discipline power and they request that he be compensated for the 57 working days lost.

Though our evaluation of the circumstances as developed in the investigation hearing might cause us to want to mete out a different degree of discipline, were we charged with the responsibility therefor, we are powerless to substitute our judgment for that of the Carrier when, as here, a careful study of the entire record is found to reasonably support the charge against the Claimant, unless, and we find such not to be the case herein, we find from the record presented that the Carrier abused its managerial discretion by acting either arbitrarily or capriciously, or in such a way as to indicate bad faith.

We are of the opinion that for the reasons stated 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 2nd day of July, 1964.