

Award No. 4544

Docket No. 4493

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 EMPLOYEES: 1. That under the current agreement, Carman C. L. Thompson 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.

EMPLOYEES' STATEMENT OF FACTS: Carman, C. L. Thompson, hereinafter referred to as the claimant, employed by the carrier at Charlotte, North Carolina, was taken out of service, charged with failure to properly inspect ATSF 274324 March 5, 1962.

Formal investigation was held March 13, 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, 1926, as subsequently amended is controlling.

POSITION OF EMPLOYEES: 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 in-

The discipline administered having been imposed in good faith without bias or prejudice, and there being no evidence of arbitrary or capricious judgment, the board should follow the principles of the cited awards and refrain from substituting its judgment for that of the carrier, which it, in fact, has no authority to do.

CONCLUSION: Carrier has proven conclusively that:

- (a) The effective agreement was complied with to the letter by carrier.
- (b) The charge against Car Inspector Thompson was proven, and he was suspended and dismissed for just and sufficient cause. He was not improperly removed from service and deprived of his employment rights, as alleged.
- (c) There can be no showing that the discipline was imposed as a result of arbitrary or capricious judgment or in bad faith. Furthermore, carrier's action is fully supported by the principles of awards of all four divisions of the board.

In view of all the evidence, 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.

The Carrier employed the Claimant herein as a Car Inspector and Repairman at its Charlotte (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, and he admits that he did not give the car a thorough internal and external inspection. Subsequent to the inspection, though 375 miles away, the car in question was involved in a separation which, the record shows, was caused by the broken carrier iron and which brought about 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, 53 days later he was restored to his position with seniority rights unimpaired.

The employees 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 days lost.

Claimant's candor in admitting that he did not properly inspect the defective car, though admirable, does, in the absence of more supporting evidence, prevent our finding that the Carrier acted arbitrarily in exercising its managerial discretion because this record reveals that the defect was obvious and should have been seen by a car inspector properly performing his work. Moreover, the defect caused a major wreck.

The record herein does not contain sufficient evidence to cause us to say that the Carrier acted arbitrarily, capriciously or in bad faith in disciplining the Claimant. Therefore, we must deny the claim.

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.