

Award No. 4614

Docket No. 4547

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 A. P. Vinson, L. W. Williams and R. J. Beasley were improperly discharged from service June 12, 1962.

2. That accordingly the Carrier be ordered to compensate the afore-named employees for all time lost June 12, 1962 to July 30, 1962.

EMPLOYES' STATEMENT OF FACTS: Carmen A. P. Vinson, L. W. Williams and R. J. Beasley, hereinafter referred to as claimants, were regularly employed by Southern Railway Co., hereinafter referred to as carrier, as car inspectors in Carrier's Norris Yard, Birmingham, Alabama, with work weeks and hours of service, respectively, as follows:

| | |
|--------------------------|---------------------|
| Tuesday through Saturday | 11 P. M. to 7 A. M. |
| Tuesday through Saturday | 11 P. M. to 7 A. M. |
| Friday through Tuesday | 11 P. M. to 7 A. M. |

Claimants had been in the service of carrier approximately 12 years, 41 years and 17 years, respectively.

Carrier charged claimants with dereliction of duty in that they failed to detect a $\frac{3}{4}$ inch cable wrapped and tied around the axle on car Southern 175589 during their tour of duty as car inspectors commencing 11 P. M., May 22, 1962, and ending 7 A. M., May 23, 1962.

Formal investigation was held in the office of Master Mechanic John Gerson, Jr., on June 11, 1962.

On June 12, 1962, claimants were notified by letter that they were dismissed from service on charges as preferred.

Claimants were restored to the service of carrier July 30, 1962, but without compensation for time lost.

(d) The board is without authority to do what is demanded in Part 2 of the claim. It cannot substitute its judgment for that of the carrier. That part of the claim should therefore be dismissed by the board for want of authority to consider the demand made.

The board being without authority to consider the demand made in Part 2 of the claim should dismiss that part for want of jurisdiction. Part 1 of the claim being without basis and unsupported by the agreement in evidence, the board has no alternative but to 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 waived right of appearance at hearing thereon.

On the night of May 22, 1962, Car Southern 175589 moved into, over the pit at the hump of, thence into the outbound yard, all at carrier's Norris Yard, Birmingham.

After being made a part of AGS Train No. 56, the car in question moved toward Attalla, Alabama, where it was discovered that there was a cable tied to the car's axle and that this cable had attached itself to the brake rod key bolt in such manner that the brakes were set.

By reason of the set brakes the record discloses damage to the wheels of the car and to approximately 40 miles of track.

The claimants are carmen employed at Norris Yard. Two of them are car inspectors in the outbound yard and one serves as the car inspector at the pit. It is not put in issue that detecting a cable around a car's axle was not within the scope of these employes' position.

The carrier charged the claimants with dereliction of duty in failing to detect the cable tied to the axle of Car Southern 175589. They were dismissed from service and subsequently reinstated.

The employes charge that they were improperly discharged and ask that the carrier be ordered to compensate them for all time lost.

We are of the opinion that even though the initial discipline may appear severe, particularly insofar as the outbound yard car inspectors are concerned, there was sufficient evidence adduced at the employes' investigation to justify their being found guilty of the charge made against them.

Being without authority to substitute our judgment for that of the carrier or to grant leniency we must find that the employes' claims should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.