

Award No. 4804

Docket No. 4749

2-SOU-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis J. Robertson 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 F. G. Lowery was improperly suspended from service on June 28, 1963, and discharged from service on July 6, 1963.

2. That accordingly the Carrier be ordered to compensate the **aforenamed** employee for all time lost from June 28, 1963 to August 8, 1963, **twenty-eight (28) working days.**

EMPLOYEES' STATEMENT OF FACTS: Carmen F. G. Lowery, herein-after referred to as claimant, employed by the carrier at Memphis, Tennessee, was taken out of service without being charged with a positive charge on June 28, 1963.

Formal investigation was held on July 2, 1963. On June 28, 1963, the claimant was given a preliminary investigation at the conclusion of which he was dismissed from the service of the Southern Railway System.

Carmen Lowery was permitted to return to work August 8, 1963, after losing twenty-eight (28) working days.

This dispute has been handled with the carrier's officers designated to handle such matters, in compliance with the 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.

Based on all the evidence of record the Board, if it properly performs its duty, 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 employees 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 claimant was employed as a car inspector at Forrest Yard, Memphis, Tennessee. He was suspended on June 28, 1963 during a preliminary investigation, pending investigation on a charge of "failing to properly perform the duties of a car inspector". After investigation held on July 2, 1963 he was notified of his dismissal from service. On August 8, 1963 he was rehired on a leniency basis.

It appears that the claimant inspected a cut of cars received in interchange from the Missouri Pacific Railroad on June 23, 1963 in Forrest Yard at Memphis. Among these cars was GATX 18612. On the following day (June 24, 1963) a derailment occurred in the train of which GATX 18612 was a part at Hutsell, Tennessee, approximately 350 miles from Memphis. As explained by a carrier witness in the investigation the derailment was caused by the disintegration of the L-4 wheel of the GATX car on the engineer's side (the side of the train inspected by claimant). The witness stated this disintegration was due primarily to an old crack in the wheel. In addition the witness indicated that the rim thickness was $\frac{1}{16}$ inch under the condemning limit of $\frac{3}{4}$ inch prescribed by AAR rules.

A review of the transcript of the investigation reveals that the burden of the testimony related to the claimant's alleged failure to detect the thin rim. It is a reasonable conclusion from the entire record that it was this alleged failure which caused the carrier to come to the conclusion that the claimant had failed to perform properly the duties of a car inspector. In coming to this conclusion it is apparent that the carrier officials must have reasoned that the claimant either (1) should have detected that the rim was $\frac{1}{16}$ of an inch off by visual inspection or (2) should have noticed that the rim was sufficiently worn down so that a gauge should have been put on it to determine whether or not it was below condemnable limits. This points up that the claimant may have used bad judgment in not calling for a gauge to measure the thickness of the rim. It may be conceded that this was sufficient to warrant some disciplinary action. It is highly questionable, however, as to whether or not the claimant's dereliction was of such a grievous nature as to warrant a suspension of thirty days. The carrier in a sense must be considered as having contributed to the situation since it is clear that wheel gauges are not furnished to car inspectors nor are they readily accessible to them. It is understandable that because of a desire to complete his work and get the trains out on time in a close case the additional time required in completing a gauge measurement may impel the inspector to pass wheels which are close to tolerances. This claimant over a fifteen year period has had a good record. In the light of all the circumstances we are convinced that the discipline was excessive and find that it should be

reduced to a reprimand and the claimant should be re-imbursed for wage loss suffered from the time of his suspension on June 28, 1963 to the date of his restoration on August 8, 1963.

AWARD

Claim disposed of as indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1966.

DISSENT OF CARRIER MEMBERS TO AWARD 4804

In Docket 4749 this Division found that the evidence adduced at the hearing was sufficient to support Carrier's finding that claimant was derelict in his duties when he failed to properly inspect the left side of car GATX 18612 on June 23, 1963. On the following day a derailment occurred in the train caused by the disintegration of the L-4 wheel of car GATX 18612, and this wheel disintegration was primarily due to an old crack in L-4 wheel.

This Division is not in a valid position to hold that Carrier's action in this case was so severe as to warrant the substituting of our opinion for that of the Carrier.

For the reason stated we dissent.

P. R. Humphreys
H. F. M. Braidwood
F. P. Butler
H. K. Hagerman
W. B. Jones