Award No. 4857
Docket No. 4780
2-MP-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company unjustly suspended Car Inspector M. M. Shultz and Car Inspector D. Reed from service for thirty-five (35) actual days on August 21, 1963 (this suspension was later reduced to twenty-four (24) days) for failing to indate test cars KCS 26384, MP 2060, MP 19840 and MP 46707 on June 12, 1963, when the Missouri Pacific Railroad Company did not have proper facilities to perform the work.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Car Inspectors Shultz and Reed in the amount of eight (8) hours each at the pro rata rate for August 22, 1963 and continuing for twenty-four (24) working days; also that their personal records be cleared by letter of this discipline.

EMPLOYES' STATEMENT OF FACTS: Car Inspectors M. M. Shultz and D. Reed, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Van Buren, Arkansas, and on July 29, 1963, claimants were notified by Mechanical Superintendent, Mr. W. F. Duncan, to report for investigation at 9:00 A.M., July 31, 1963, in the office of the trainmaster to develop the facts and place responsibility for failing to apply indate test to cars KCS 26384, MP 2060, MP 19840 and MP 46707 on the repair track at Van Buren, Arkansas on June 12, 1963.

The investigation was held at 1:00 P.M., July 31, 1963 following which on August 21, 1963 the claimants were advised in letter signed by Superintendent H. D. Huffman that they were being suspended from service for thirty-five (35) actual days, however, they were returned to work on September 26, 1963, which was twenty-four (24) actual days after their suspension.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust it.

test is imposed for the safety of the public and of the employes and the Interstate Commerce Commission insists that the rule be rigidly adhered to. A substantial fine was imposed on the Carrier by the I.C.C. by reason of the violation of the rules.

This is a case where the law has imposed safety rules and regulations on the carrier. Management can carry out the rules and regulations only through its employes. Here the carrier employed competent car inspectors who were familiar with the rules but the car inspectors simply failed to perform their duty of making the in-date tests required by the Safety Appliance Act and the A.A.R. Interchange Rules. Compliance with rules can be secured only through the administration of discipline when appropriate. Here the officers responsible for employes at Van Buren and who know them personally felt it was necessary to impose discipline in the form of 35 days' actual suspension as a means of insuring compliance with the rules in the future.

Certainly such discipline is not harsh or an abuse of discretion in the light of the deliberate failure to comply with the rules. In fact, claimants' long years of service were undoubtedly taken into consideration for not imposing more severe discipline. There is no basis for your Board disturbing the carrier's action. Where a carman helper on this property was dismissed from service for his failure to service treat journal boxes, your Board in denying the claim for reinstatement held in Award 3828 (Referee Doyle)

> **"Third, The question of excessive punishment.** In reviewing the sanction imposed we note that the offense is most serious. It is capable of producing tremendous damage. In view of this we are constrained to hold that legal justification exists for the penalty of dismissal and that it is not shown to have been motivated by ill will. Since there is a basis in reason for the extreme sanction of dismissal it is not within our province to void it as an arbitrary exercise of power. The fact that we might have imposed less punishment in the light of Stewart's good record 15 years does not furnish a basis for reversal."

Again in Award 3636 (Referee Carey), your Board denied a claim on behalf of a carman on this property for reinstatement where the claimant had been afforded a fair and impartial investigation. Your Board held

> "The transcript of the investigation has been carefully reviewed. In a proceeding such as in this case it is necessary that there be substantial evidence to support the charge and that the carrier's action was not arbitrary or capricious. We think the evidence adduced at the investigation was adequate to support all of the charges made against claimant in this case and we find no reasonable grounds for disturbing the decision reached on the property."

In the same way here, the discipline assessed was fully warranted to insure compliance with the safety rules imposed on the Carrier by the I.C.C. Your Board has no authority to disturb the action taken by the Carrier. The claim must be denied.

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.

Claimants, Shultz and Reed, Car Inspectors, contend that they were unjustly suspended for thirty-five actual days on August 21, 1963, (this suspension was reduced to twenty-four days) for failing to in-date test cars when the Carrier did not have the proper facilities to perform the work.

Carrier maintains that on June 12, 1963, at Van Buren, Arkansas, Claimants, in addition to inspecting trains, were required to make repairs to any cars that had been bad ordered and switched to the repair track pursuant to safety regulations of the Interstate Commerce Commission (I.C.C.); that certain rules, regulations and instructions of the Association American Railroads (A.A.R.) Rule 60 (t) require that freight cars placed on a repair track must have their brake equipment tested by use of a testing device if the cars has not been so tested within ninety days (in-date test); that Claimants were familiar with these rules and that of the cars repaired by them three of them had not been given an in-date test within the previous 90 days; that Claimants made repairs to defects noted by I.C.C. Inspectors which were indicated by their notation on billing repair cards but there was an absence of any notation that in-date tests were made; that Claimants made out the switch list to show the cars O.K. to be released.

Claimants admitted during the investigation that they were familiar with the A.A.R. rules, that they had made no in-date tests and, further, that no notation was entered on the billing repair cards to indicate that they had or had not made such tests. Claimants did testify, affirmatively, that the in-date tests were not given because there was insufficient air to make the tests.

It appeared from the testimony of the Mechanical Foreman that he had made a check of the yard office and failed to notice that no notation had been made for making the in-date test. The following question was asked and answer given by the Mechanical Foreman:

"Q. Has this been a practice of the repair track at Van Buren to make in-date tests on all cars that are due prior to them being released for service?
"A. I thought we were doing a pretty good job until several months back when we had to use the diesel for air pressure, from that time on it is possible that we are getting a little lax in making those indate tests."

He was asked the following question and answered it:

'Q. Do you have ample air supply to conform to A.A.R. rules in making IDT available on repair track?
"A. The air is ample providing there is no air used for any other purpose, if air should be used by the other carmen for any reason in interferes with men making an IDT test."

Claimants were familiar with A.A.R. rules and that these rules were to be observed in the interest of Safety. They made no in-date test nor did they enter any notation on the billing repair card that they had not made such test. In this they were lax.

Carrier also has a responsibilty to carry on its operation in a safe and efficient manner. Carrier cannot escape some responsibility for the situation that existed at Van Buren. The source of air supply on its repair track at Van Buren was a Diesel locomotive which equipment was insufficient and inadequate at all times to assure proper air pressure to make in-date tests. Carrier stated that the discipline imposed was for the purpose of insuring compliance by its employes with safety rules imposed on Carrier by I.C.C. Carrier must accept some of the responsibilty for what occured at Van Buren.

Obviously, in every discipline case the punishment should fit the offense. It occurs to this Board that the penalty imposed by Carrier, under all the facts and circumstances herein was excessive and harsh. A suspension of ten days from August 21, 1963 would have been adequate to have accomplished the purpose for which Carrier announced it was intended. The Board feels the penalty should be reduced to ten days suspension after August 21, 1963, and that Claimants be reimbursed for any earnings lost on a pro rata basis.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1966.

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