



**Award No. 4928**

**Docket No. 4782**

**2-KCS-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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the current agreement was violated when Carmen P. F. Rubel, J. G. Brister, H. L. Baird and W. C. Dubose were suspended from service, because of train failure which occurred some one hundred (100) miles from Port Arthur, Texas on February 12, 1963.

2. That accordingly, the Carrier be ordered to compensate Carmen P. F. Rubel for May 18, 19, 20, 21 and 22, 1963; J. G. Brister for May 13, 14, 15, 16 and 17, 1963; H. L. Baird for May 6, 7, 8, 9 and 10, 1963; and W. C. Dubose for April 29, 30, May 1, 2 and 3, 1963; eight (8) hours each per respective dates at pro rata rate.

**EMPLOYEES' STATEMENT OF FACTS:** The Kansas City Southern Railway Company hereinafter referred to as the carrier, maintains at Port Arthur, Texas, a train yard and car shops. Carmen P. F. Rubel, J. G. Brister, H. L. Baird and W. C. Dubose are regularly employed by the carrier and assigned as car inspectors in the train yard, with work weeks of 4:00 P. M. to 12:00 Midnight and 12 Midnight to 8:00 A. M. Saturday through Wednesday and Monday through Friday, respectively.

Train No. 42 was made up in Port Arthur train yard during the period 4:00 P. M. February 11, 1963 and 4:35 A. M. February 12, 1963, at which time it departed from the yard. Approximately 83 miles from Port Arthur, near Mile Post 703, the coupler came out of Car MP63645, necessitating that the car be set out at DeQuincy for repairs.

On February 14, 1963, carrier addressed the following letter to Carman B. F. Wiley and the Claimants:

**"Port Arthur, Texas**

**February 14, 1963**

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Employees also contended that carrier had violated Rule 26 (which carrier quoted above). An investigation was held, pursuant to the rule. Their committeeman, Mr. Copeland, was present, and had full opportunity to participate.

While each of the men who are claimants here stated at such investigation either that he had inspected the car in question and that the retainers were in place, or that the train had been given the "usual" inspection, it is self-evident that there was a failure on their part individually and/or collectively to discharge his or their responsibilities.

The claims should be denied, and the board is respectfully requested to so find.

**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 waived right of appearance at hearing thereon.

Carrier maintained at Port Arthur, Texas, a train yard and car shop. Claimants were assigned as Car Inspectors in the train yard at the time involved. Train No. 42 was made up in the Port Arthur train yard during the period 4:00 P.M., February 11, 1963, and 4:35 A.M., February 12, 1963, at which time it departed from the yard. Approximately 83 miles from Port Arthur at Mile Post 703 a coupler came out of one of the cars necessitating that it be set out for repairs. Claimants were called for investigation to fix the responsibility for allowing the car to depart Port Arthur with the cross key missing. A hearing was held and they were suspended by the Carrier.

This being a discipline case, Carrier had the burden of establishing the responsibility of Claimants for the charge made. That the coupler came out of a car at Mile Post 703 merely raised a rebuttable presumption, at best that this was due to the train being allowed to depart Port Arthur by the Car Inspectors with the cross key retainer missing. When Claimants testified positively that the train was given the usual inspection at Port Arthur and there was no evidence that the cross key was missing when the car was inspected at Port Arthur that completely overcame any presumption and left Carrier with no proof whatever that Claimants were guilty of any neglect.

Consequently, we must find that Claimants were unjustly suspended from the service, that their records should be cleared, and they shall be compensated for any wage loss resulting from the suspension.

#### AWARD

Claim allowed 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 July 1966.

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