

Award No. 5022

Docket No. 4954

2-SOU-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood 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 Carmen S. C. Pratt, C. Humphrey and W. A. Norman, Jr., were improperly suspended from service beginning August 2, 1964 through August 16, 1964.
2. That accordingly the Carrier be ordered to compensate the aforesaid employees for time lost beginning August 2, 1964 through August 16, 1964.

EMPLOYEES' STATEMENT OF FACTS: Carmen S. C. Pratt, C. Humphrey and W. A. Norman, Jr., hereinafter referred to as the claimants, are employed by the carrier at Coster Shop, Knoxville, Tennessee and were removed from service August 2, 1964 through August 16, 1964, charged with failing to properly perform their duties in that CG 32962 was released from Coster Shop after major repairs and/or overhaul on July 9, 1964, and found to have a truck side cracked in three places. Formal investigation was held August 3, 1964.

The trial officer designated by the carrier was Mr. M. H. Hammett, Manager.

In a letter dated August 6, 1964, the claimants were advised by Manager Hammett that they were found guilty as charged and suspended from service without pay, beginning August 2, 1964 and ending at midnight August 16, 1964.

This dispute has been handled with the carrier officers designated to handle such matters, in compliance with the current agreement, all of whom refused or declined to make satisfactory settlement.

The agreement effective March 1, 1926, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimants were subject to the protection of the provisions of the aforesaid controlling Agree-

In the absence of any showing that the discipline imposed in suspending Carmen Pratt and Humphrey and Inspector Norman for dereliction of duty was arbitrary or capricious or in bad faith, the Board should follow the principle of the above referred to awards.

CONCLUSION: Carrier has proven that:

(a) Under the current agreement Carmen Pratt and Humphrey and Inspector Norman were properly suspended from the service during the 15 calendar day period beginning August 2 and ending August 16, 1964.

(b) The charges against Messrs. Pratt, Humphrey and Norman were proven at a fairly and impartially conducted investigation in which they were duly represented and testified. The evidence of record adduced at that investigation clearly reveals the indisputable fact that they were guilty as charged and were therefore dismissed for just and sufficient cause.

(c) There can be no showing that the discipline imposed was arbitrary or capricious or in bad faith. Carrier's action in suspending Carmen Pratt and Humphrey and Inspector Norman is fully supported by the principles of awards of all four Divisions of the Board.

(d) The board is without authority to substitute its judgment for that of the carrier.

On the basis of all the evidence of record, the claim presented by the brotherhood should be denied. Carrier therefore requests that the board 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.

Summarizing very briefly the facts herein which are fully set forth and analyzed in the record, the claimants, Carmen S. C. Pratt and C. Humphrey, were employed in the inspection and repair or rejection of freight car trucks in accordance with specifications established by the railroads through the Association of American Railroads.

On July 8, 1964, at Coster Shop, Knoxville, Tenn., Messrs. Pratt and Humphrey were inspecting truck sides installed under cars, among others Car CofG 32962. Carman Norman, as car inspector, had the duty of making final inspection report for each car repaired and released from the Shop. On July 9, 1964, above numbered car was released and dispatched from Knoxville to Spartanburg, S. C. where it was loaded and later moved to Hayne Junction, S. C. There, on July 11, 1964, after said car had been placed in train No. 58, a Car Inspector found that the truck side of the A-1 location was defective in that it was cracked, necessitating removal of the car from the train.

Later, the above named claimants were charged with failure to properly perform their respective duties outlined above and after an investigation were suspended from service from August 2 through August 16, 1964.

From a painstaking review of the facts presented, we are of the opinion that the charge against claimants, to wit dereliction of duty, was clearly proven. The seriousness of the neglect of duty is certainly not arguable and it would seem that Carrier's disciplinary action in suspending claimants for fifteen days was justified, both as a punishment and as an example to others, and cannot be said to have been arbitrary, capricious, or in bad faith.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.