

Award No. 5334

Docket No. 5140

2-SOU-CM-'67

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William H. Coburn 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 G. W. Foster, Spencer, North Carolina, was improperly suspended from service January 18, 1965 through February 2, 1965.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe for all time lost beginning January 18, 1965 through February 2, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** Carman G. W. Foster, hereinafter referred to as the Claimant, employed by Southern Railway Company, hereinafter referred to as the Carrier, was suspended from service on January 18, 1965, charged with failure to make proper inspection of USAX 46604, in that he did not detect a thin rim wheel on January 16, 1965.

Formal investigation was held at 1:00 P.M., January 24, 1965, copy attached and marked Exhibit A.

On January 29, 1965, Claimant was notified that he was found guilty as charged, and suspended from service beginning January 18, 1965 through February 2, 1965, copy attached and marked Exhibit B.

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 that 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:

Car Inspector Foster's suspension having been for just and sufficient cause after having been proven guilty of dereliction of duty in that he did not properly assume the responsibilities of the position of car inspector and perform properly the duties of that position on January 16, 1965, Carrier acted in good faith, without bias or prejudice, in suspending him. Certainly, there is no evidence of arbitrary or capricious judgment.

In these circumstances, the Board should follow the principles of the above referred to awards.

### CONCLUSION

Carrier has proven that:

- (a) Under the current agreement Car Inspector Foster was properly suspended from service January 18, 1965 through February 2, 1965.
- (b) The charge against Car Inspector Foster of not properly performing his duties as car inspector on January 16, 1965 was proven at a fairly and impartially conducted investigation at which Car Inspector Foster was duly represented and testified. The evidence of record adduced at the investigation clearly reveals the indisputable fact that he was guilty as charged, and was therefore suspended for just and sufficient cause in accordance with and pursuant to Rules 34 and 36 of the agreement in evidence.
- (c) There can be no showing that the discipline imposed was arbitrary or capricious or in bad faith. Carrier's action in suspending Car Inspector Foster 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.

Based on all the evidence of record the Board should make a denial award, and Carrier requests that it do so.

(Exhibits not reproduced.)

**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.

On January 16, 1965, Claimant was working as a Car Inspector on the 7:00 A. M. to 3:00 P. M. shift at Spencer, N. C. One of the cars he inspected

during his tour of duty was USNX 46604 in Train No. 253. After the train departed Spencer and had run about 134 miles, it was derailed, causing extensive damage to cars and lading. According to the Carrier, the derailment was caused by the breaking of the lead wheel at the R-4 location on the truck under Car USNX 46604 and that the wheel broke "due to thickness of the rim . . . being thin. . . ." (Carrier's Brief, p. 2.)

As a result of these events, the Claimant was formally charged with "failure to make proper inspection of USNX 46604 in that you did not detect a thin rim wheel on January 16, 1965 at Spencer . . ." An investigation was held on January 24, 1965. Thereafter the Carrier found Claimant guilty as charged. He was accordingly suspended from service for 15 days and, as a result, lost eleven days' pay.

A careful review of this rather voluminous record, including the exhibits and the transcript of the investigation, establishes that there was substantial evidence supporting the Carrier's finding of guilt. There is no evidence that the Carrier's action was arbitrary or capricious, nor can it be said that the discipline assessed was excessive or unreasonably harsh. Accordingly, the Board will not set aside the discipline imposed.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1967.