

Award No. 5429

Docket No. 5287

2-SOU-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**SOUTHERN RAILWAY COMPANY
(New Orleans and Northeastern Railroad Company)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carmen D. L. Carter and W. H. Sanford were improperly suspended from service May 26, 1965 through July 7, 1965 and May 26, 1965 through July 9, 1965 respectively.

2. That accordingly the Carrier be ordered to compensate Carman D. L. Carter, Meridian, Mississippi, for all time lost from May 26, 1965 through July 7, 1965 and Carman W. H. Sanford, Meridian, Mississippi, for all time lost from May 26, 1965 through July 9, 1965.

EMPLOYES' STATEMENT OF FACTS: Carman D. L. Carter and W. L. Sanford, hereinafter referred to as the Claimants, employed by the Southern Railway Company, Meridian, Mississippi, hereinafter referred to as the Carrier, were suspended from service on May 26, 1965 charged with "failure to properly perform your duties inasmuch as you failed to detect the defects in NYC 162526 which failed and caused a derailment at Tuscaloosa, Alabama Train #154 on May 26, 1965." Copy attached and marked Exhibit A.

Formal investigation was scheduled to be held on Monday, May 31, 1965, however, by mutual agreement same was postponed to and subsequently held on Wednesday, June 9, 1965, copy attached and marked Exhibit B.

On June 18, 1965, Claimants were notified that they were guilty as charged and suspended from service beginning May 26, 1965 through July 7, 1965 and May 26, 1965 through July 9, 1965, respectively copy attached hereto and marked Exhibit C.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have declined to make satisfactory settlement.

performing their duties and assuming their responsibilities as car inspectors on the 3 P.M. to 11 P.M. shift May 25, 1965.

(b) There can be no showing that the disciplinary action taken was arbitrary or capricious or in bad faith. To the contrary Carrier's action in suspending Car Inspectors Carter and Sanford is fully supported by the record and by the principles of awards of all four divisions of the Adjustment Board.

(c) The Board is without authority to substitute its judgment for that of the Carrier.

Based on the evidence of record the Board is left with no alternative but to make a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right after doing so to make response thereto and present any other evidence necessary for the protection of its interests.

Oral hearing is requested.

(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.

The claims are for compensation for the periods May 26, 1965 through July 7, 1965 and May 26, 1965 through July 9, 1965 respectively when the claimants were suspended from service for, "failure to properly perform your duties inasmuch as you failed to detect the defects on NYC 162526 which failed and caused a derailment at Tuscaloosa, Alabama in Train #154 on May 26, 1965."

On May 26, 1965 the claimants inspected a car with swivel butt couplers at Meridian, Mississippi. Subsequently, that morning when the train was enroute from Meridian to Norris Yard, Birmingham, a distance of approximately 100 miles, NYC Car 162526 broke and dropped down on to the tracks causing a derailment. The cause of the derailment was determined as defective coupling.

The claimants' contentions were that they had inspected the car properly and defects later appearing in the coupling were not detectable by the inspections that they had made.

The Carrier contended that the claimants did not properly inspect the coupling or they would have detected or anticipated its condition, reported the situation and had the car replaced. It was also a requirement that cars with

swivel butt couplings should be reported to their immediate supervisors. Such reports were not made by the inspectors. Evidence was presented that the coupling was held by bolts only and had previously been repaired. Thus a proper inspection would have revealed the unsafe condition of the coupling.

From a review of facts presented, we are of the opinion that the charges against the claimants were proven. The record does not reveal any conduct on the part of the carrier which could be considered arbitrary, capricious or in bad faith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1968.