Award No. 5896
Docket No. 5786
2-IC-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 99, RAILWAY EMPLOYES' DEPARTMENT, A.F. of L. - C.I.O. (CARMEN)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: Claim of Employees:

1. That under the current agreement Carmen John W. Ryan and Edward A. Stovall were unjustly suspended from the service of the Illinois Central Railroad for a 15-day period beginning March 13, 1968, ending March 27, 1968.

2. That accordingly the Illinois Central Railroad be ordered to compensate Carmen John W. Ryan and Edward A. Stovall for all time lost account of the aforesaid unjust suspension.

EMPLOYES' STATEMENT OF FACTS: Carmen John W. Ryan and Edward A. Stovall, hereinafter referred to as the claimants, entered the service of the Illinois Central Railroad, hereinafter referred to as the carrier, in the years 1942 and 1951. At the time of the incident giving rise to the instant claim, claimants were regularly employed by carrier as carmen at Weldon coach yard, Chicago, Illinois. Claimant Ryan was assigned hours 7:00 A.M. to 3:00 P.M, with Sunday and Monday as rest days. Claimant Stovall with assigned hours 7:00 A.M. to 3:00 P.M., with Monday and Tuesday as rest days.

On February 23, 1968, the following letter was addressed to Mr. J. W. Ryan and Mr. E. A. Stovall, by Shop Superintendent L. R. Barron.

"Dear Sirs:—

You will arrange to be present at a formal investigation to be held in the General Forman's office at Weldon Coach Yard, Chicago, Illinois, at 9:30 A.M., February 28, 1968. At this investigation you are charged with your responsibilities, if any, in connection with IC Train No. 3 being delayed 26 minutes on February 17, 1968 account of excessive train line leakage in the main train line over the south truck of IC coach 2831, account of a loose union.

You may have at this investigation witnesses and representatives as provided for in the Schedule of Rules governing the working conditions

any leakage when they tested at Weldon Yard. The only valid conclusion is that their test was improper and did not discover the leak. This conclusion is reinforced by the claimants' own testimony of how they performed the air brake test.

In the past, many referees have established the principle that it is not the function of the Adjustment Board of the 2nd Division, to reexamine the evidence of a formal investigation and to substitute its judgment for management's, unless the company's decision is obviously arbitrary or capricious. In Second Division Award 1323, Referee Donaldson said:

> It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless carrier's action be so arbitrary, capricious, or frought with bad faith as to amount to an abuse of discretion.

One reading of the transcript, comparing the written instructions for air-brake testing with the claimants' account of what they actually did will convince any fair minded reader that the company acted, not only in good faith, but with leniency. The claimants have developed such slipshod habits in testing they are no longer sure of the one and only fool proof method for discovering leaks. In place of the elaborate check and cross check method spelled out in detail in the instructions, the claimants have substituted their own "hit or miss" method. This should be sufficient evidence that the company did not act in an arbitrary or capricious manner and on this basis the Board should deny the claim.

IV. Summary and Conclusion

The claimants were given an opportunity at a formal investigation to clear themselves of the charges of being responsible for delaying train no. 3 but their testimony incriminated them. The company has shown, by two independent lines of reasoning, that the cars were not and could not have been properly tested at Weldon Yard. The brotherhood has not claimed that the suspension was too harsh.

It was not, considering the gravity of the offense. If serious accidents are to be prevented we must not confine our attention to accidents that have happened but rather seek out accident-oriented behavior. It is often an accident that an accident does not occur. The accomplishment is of relatively little importance; the behavior leading to the accomplishment is of the utmost importance. Mr. Ryan's and Mr. Stovall's behavior could very easily have resulted in serious loss of life and property.

Were the Board to sustain this claim, it would have to decide that the company's action was arbitrary, capricious or an abuse of managerial discretion. This is obviously not the case.

The company asks the board to deny the claim.

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.

The transcript of investigation reveals: (1) that claimant Carman J. W. Ryan acknowledges that he did not check the gauges for possible leakage on the train line pipe, and (2) that claimant Carman E. Stovall concedes to bypassing both the 15 pound reduction and the two brake inspections (Test No. 1), and also omitted making a Full Service Application (Test No. 2). Thus, by their own admissions, the claimants failed to follow designated procedures for testing train air brakes with a portable test truck.

In that claimants are not free from culpability, they are hardly in position to speculate that the union may have become loose, after the equipment was released by them for service, and moved less than one-half mile from Weldon Coach Yard to Central Depot.

On the record in this case claimants stand guilty of jointly sharing responsibility for the excessive train line leakage which resulted in Train No. 3 being delayed 26 minutes on February 17, 1968. They are subject to discipline and the 15 days suspensions assessed against them are not unduly severe.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.