



Award No. 6250

Docket No. 6115

2-MKT-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement lead carman A. F. Bailey was unjustly suspended from the service of the Missouri-Kansas-Texas Railroad Company at Muskogee, Oklahoma for seven (7) days, August 19 to August 25, 1970, inclusive.

2. That accordingly the Missouri-Kansas-Texas Railroad Company be ordered to compensate lead Carman A. F. Bailey for all time lost account the aforesaid unjust suspension.

EMPLOYES' STATEMENT OF FACTS: A. F. Bailey, hereinafter referred to as the claimant, is employed as lead Car Repairer at Missouri-Kansas-Texas Railroad Company rip track at Muskogee, Oklahoma, hereinafter referred to as the carrier, and is regularly assigned to the day shift at the rip track.

On the night of August 16, 1970, P.R.R. 19364 was found by yard inspectors to have wedge out of place L-1, attempt was made to replace the wedge back into proper position, and it was found the journal box had hole in the bottom of it; as result of this hole the car was bad ordered to rip track for repairs.

The morning of August 17, 1970, rip track force disassembled the set of trucks to repair oil box on truck side L-1 of P.R.R. 19364. Mr. Bailey, lead carman, with the assistance of Mr. G. N. Trevathan and L. W. Brannon, carmen, disassembled the trucks and Mr. Bailey, claimant, bronze welded metal patch over the hole. This type of repair was discussed with Mechanical Working Foreman Crank. Mr. Crank was to be off for one day, August 17, 1970, but he was on the rip track the morning repairs were made on P.R.R. 19364. On the evening of August 17, 1970, this car was placed in train M.K.T. #5 for South movement. Approximately sixty (60) miles from Muskogee, journal L-1 broke causing one set of trucks to derail.

"Q. After you had it torn down did you also make an inspection of the journal, and what was your conclusion of it?

A. Yes, as far as I could tell from the naked eye there was nothing wrong with it."

It is the carrier's position that the organization's contentions are without merit and agreement support in the instant alleged dispute and this claim should be denied.

All data submitted in support of the carrier's position have heretofore been submitted to the employes or their duly accredited representatives, as clearly shown by the record in this case.

The carrier requests ample time and opportunity to reply to any and all allegations contained in employes and organization's submission and pleadings.

Except as expressly admitted herein, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons the Missouri-Kansas-Texas Railroad Company respectfully requests the Second Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Company such other relief to which it may be entitled.

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.

This is a disciplinary case. Claimant, having found a hole in the journal bearing box of P.R.R. Car No. 19364, brazed a patch of metal over the hole and the car was returned to a freight train. The repair work was done on August 16, 1970, and on the very next day, after travelling a distance of approximately fifty miles from the repair point, a derailment occurred.

Claimant was charged with improper performance of duties, in that he did not make proper inspection of the journal, and failed to properly repack and oil, resulting in journal failure and derailing.

As in all cases of this nature, we are bound by the evidence presented by opposing factions at the hearing. We find from a review thereof that there was sufficiently substantial evidence presented to enable Carrier to conclude that claimant was indeed negligent. Although the bulk of the evidence is to be sure circumstantial, it was nevertheless persuasive enough to justify Carrier in suspending claimant for seven days. It is true that claimant advances an argument in this case that the journal itself was defective and could not be detected by the naked eye, hence claimant was blameless. As was stated in

Award 14, Public Law Board No. 326: "The fact that there is another hypothesis which could be advanced from the conflicting evidence does not negate the Carrier's action." We agree and will accordingly deny the claim.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Secretary**

Dated at Chicago, Illinois, this 3rd day of March, 1972.