

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas 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 H. L. Cash, Irondale, Alabama, was improperly suspended from service from January 24 to February 9, 1972.
2. That accordingly, the Carrier be ordered to compensate Carman H. L. Cash for all time lost beginning January 24, 1972 through February 9, 1972.

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.

Claimant was suspended from service from January 24 to February 9, 1972 for failure to "properly inspect" a tank car.

The Organization contends that Carrier violated the terms of Rule 34 of the schedule agreement in that Claimant was suspended from service "without just and sufficient cause" as is required by the rule.

In its Submission the Organization states:

"The charge of 'failure to properly inspect UTLX 39666, tank car departing Norris Yard January 13, 1972 Train No. 3B-183' was never proved. There were no witnesses who saw the tank car before it departed Norris Yard and no proof that it was defective at that time. It is just as reasonable to

"assume that the car became defective after it departed as it is to assume it was defective upon arrival. It is true that for a coupler to pull out, the cotter key and retainer would have to come out first, however there is no proof in the investigation as to when and where this happened. It is very possible that the cotter key sheared off just prior to the coupler pulling out. It is very doubtful that the car would have run the distance from Irondale, Alabama to Wilton, Alabama if the cotter key was missing at the time the car was inspected by the Claimant.

None of the Carrier's witnesses present at the investigation saw UTLX 39666 until after it had been repaired at Wilton, Alabama by Carman LaGrove. Both Carrier's witnesses, General Foreman Slater's and Ingle's testimony was based on information passed on to them from the train crew through Carman LaGrove. There were no members of the train crew or Carman LaGrove present at the investigation which deprived Carman Cash or his representatives the opportunity to question them on the information they had furnished Carrier's witnesses."

Carrier, on the other hand, asserts that Claimant was afforded a fair and impartial investigation in connection with the charges against him, stating:

"The evidence brought out in the investigation conducted by the officer in charge, Master Mechanic J. T. Freeman, conclusively proved that Claimant was guilty, as charged, of failure to properly inspect UTLX-39666 which departed Norris Yard in Train 3B-183 on January 13, 1972. This was the second charge against Claimant for negligent and improper inspection of cars in outbound trains resulting in cross keys coming out in train movement (page 12 of transcript).*/

Carrier strongly urges that its decision with respect to both the question of guilt and the amount of discipline imposed must not be disturbed where it is supported by substantial evidence. In support of its thesis, and the fact that this is a long standing policy of this Board, Carrier cites 48 prior awards to that effect. We have no quarrel with the thesis, and continue to support it.

*/ It should be noted that the first charge alluded to occurred in June 1960. Carrier made no attempt to indicate what discipline, if any, was given.

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This does not mean, however, that the Board is precluded from determining whether the record before us does in fact contain substantial probative evidence that supports Carrier's decision; indeed, this is our mandate.

With respect to the instant dispute the Board finds that the metal of this record is so corroded by double hearsay, conflicting testimony by Carrier witnesses and inferences upon inferences that there is virtually nothing of any probative or substantive value upon which to base a determination of guilt. Accordingly, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1974.

