

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles 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 Employes:

- 1. That under the Agreement, Carman Arlie Stalans, Knoxville, Tennessee, was unjustly suspended from service in January, 1975.
- 2. That accordingly, the Carrier be ordered to pay Carman Arlie Stalans for all time lost from January 3, 1975 through January 12, 1975.

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 charged with failure to perform properly his duties as a car inspector concerning "Train Bristol # 185" which resulted in the cross key coming out of PRR 260927 -- resulting in derailment of four cars.

Subsequent to investigation, claimant was suspended, without pay from January 3, 1975 through January 12, 1975.

The evidence of record demonstrates that the car arrived at 8:30 p.m. on December 24, 1974, and was inspected by the Claimant shortly thereafter. (Claimant's shift was 3:00 p.m. to 11:00 p.m. that day). The car remained on a storage track until about 12:48 a.m. December 25, 1974, at which time it was moved, and the derailment occurred at about 1:15 a.m.

It seems clear that the derailment resulted from the coupler on the car in question dropping out.

The cross key was found hanging loose from the car, but the retainer was not located.

The Organization urges that the record fails to show that Claimant's action -- or inaction -- caused the derailment, and it relies upon Award No. 6713. In that case, a coupler fell off seventy (70) miles from the yard and the train had passed through two of Carrier's repair points, without any defect being observed. The Board found that Carrier's disciplinary action was founded on "... assumptions, possibilities and suspicions..."

But, we submit that this record is in a significantly different posture. All of the activity of record in this case was within the yard, and the car was only moved a short distance from the point where Claimant states he inspected both sides.

The Claimant suggests that the problem may have been caused by vandalism or sabotage, and stated that a number of unsavory individuals had been seen in the area prior to this incident who had assumedly engaged in certain destructive and illegal activities. But, the Claimant's contentions in this regard are purely speculative -- as there is no evidence that the vandals were in the immediate vicinity of the car on the night in question. There is a difference of opinion as to the tools which would be required to remove a keeper, but there is nothing of record to suggest a forcible removal.

While we will not allow "assumptions, possibilities and suspicions" to substitute for proof, under this record we find that the evidence presented reasonably supports the Carrier's imposition of disciplinary action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1977.