

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE.

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarty and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that

(1) D. R. King, Weighmaster, Roper Yard Office, shall be compensated for all wage loss suffered for the period November 23, 1945 to March 12, 1946 inclusive, when he was out of the service of the carrier account of unjustly dismissed following investigation held November 13, 1945.

(2) F. S. Payne, Carder, Roper Yard Office, shall be compensated for all wage loss suffered for the period November 27, 1945, to March 9, 1946, inclusive, when he was out of the service of the carrier account of unjustly dismissed following investigation held November 20, 1945.

OPINION OF BOARD: The Claimants were dismissed from the service of the Carrier after investigation for failure to properly check two refrigerator cars loaded with dressed turkeys, thereby causing serious delay in delivering the same to the consignee. Claimant King was dismissed as of November 19, 1945 and reinstated as of March 4, 1946. Claimant Payne was dismissed as of November 27, 1945 and reinstated as of March 4, 1946. The Organization contends that the dismissals were not justified and asks that Claimants be reinstated with seniority unimpaired and compensated for all wage losses resulting therefrom.

The two PFE cars herein involved, loaded with dressed turkeys and consigned to the Utah Ice and Storage Company, Salt Lake City, were delivered in interchange by the Union Pacific Railroad to this Carrier at its Roper Yard (three miles east of Salt Lake City) shortly before midnight on November 4, 1945. Claimant Payne acting as Yard Checker checked these two cars as empties and as a result they were switched to a storage track at Salt Lake City with other empty refrigerator cars. On the morning of November 7, 1945, these two cars with four other refrigerator cars, were returned to Roper Yard for movement to Hooper, Utah, to fill an order for six empty refrigerator cars. Claimant King acting as Yard Checker checked the road train and listed these two cars as empties. The error was subsequently discovered and the cars returned to Roper Yard on the morning of November 9, 1945, where they were checked by Head Carder Hilton as loads and delivered to the consignee that afternoon. Carrier alleges that the turkeys were damaged because of the delay in handling.

The record shows that it was customary for the PFE to place its empty car seals on cleaned refrigerator cars with a card attached to the seals indicating that the car was ready for use after cleaning. It is not disputed that such seals with cards attached, with no other seals present, constitute reliable evidence that the car is empty. Such a seal with card attached was on the west side of the cars here involved when they were checked by these claimants in Roper Yard. It also appears that both sides of each car were sealed with Union Pacific seals indicating that the cars were loaded. It is evident that the cars were loaded on the east side as they were lined up in Roper Yard. The PFE empty car seals with cards attached were removed from the east side when the cars were loaded but were left on the west side. It was customary in Roper Yard to do all checking on the west side of the cars. The negligence of these claimants was in failing to observe the Union Pacific seals on the west side of the cars. Both checks were made by these claimants during hours of darkness.

It is a duty of a car checker to determine whether cars are loaded or empty. In determining this fact, it is not required that the checker open the doors for the purpose of making a visual inspection. The finding of empty car seals with cards attached indicating that the car had been cleaned and was ready for use, is sufficient evidence for the checker to report the car as empty unless warning circumstances exist indicating that further investigation should be made. The finding of cars double sealed as these apparently were, constitutes such a warning requiring further investigation by the checker. These claimants were therefore negligent in failing to observe that the cars were double sealed on the west side and in not making the further investigation that this fact called for.

While we think that these claimants were subject to discipline, we are of the opinion that adissmissal from service is out of all proportion to the gravity of the offense. There was no intentional misconduct or disregard of duty by these employees. It is a mistake that is bound to occur occasionally in work of this kind. A dismissal from service severs completely and finally the employee's right to work for the carrier. It is a very serious penalty for employees who have established seniority rights and receive the benefits derived therefrom. These two claimants had never previously been subjected to discipline. The fact that both had made the same error in checking these cars at different times indicates that the situation existing tended to mislead. It is true that the Head Carder determined on his check of the cars on their return to Roper Yard that the cars were loaded. But this was after the consignee had made inquiry about the cars and they had been located at a point thirty miles from Salt Lake City and returned to Roper Yard. It is evident that a search was on to locate these cars, a fact which would naturally bring about a closer check.

We realize fully the necessity for the maintenance of discipline in the operation of a railroad, and where discipline is merited, this Board will not ordinarily interfere with the judgment of the carrier with reference thereto. We cannot agree, however, that the Carrier was acting within the maximum limit of a reasonable exercise of judgment when it dismissed these men from the service. We think a three months suspension from service would be a maximum penalty for the offense committed when all the evidence and circumstances are impartially considered. We, therefore, direct that each be reinstated as of three months subsequent to the date he was removed from service pursuant to the dismissals from service imposed by the Carrier with seniority rights unimpaired. Claimants will be compensated for time lost on their regular assignments only, such loss being due to the excessive discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent shown by the Opinion.

AWARD

Claim sustained to the extent shown by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.