

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

John Wesley Lee, Trucker, Philadelphia Transfer, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from May 7, 1947 until adjusted. (Docket E-429.)

OPINION OF BOARD: Claimant based his claim on three issues: (1) The sufficiency of notice; (2) the impropriety of the investigation and trial, and (3) a review of the disciplinary action taken. On his behalf are cited Rules 6-A-1, 6-B-1, 6-C-1, and 6-D-1 of the Agreement.

On the first proposition it is contended that there was not sufficient notice, in that the investigation and trial were held on the day the notice was given. Secondly, that the Foreman issued orders contrary to the Safety Rules and the Carrier made no effort to develop facts fixing the responsibility for the cause of the accident. And on the third issue, that Carrier assessed unwarranted and excessive discipline in an arbitrary manner and without due process of Claimant's rights.

The Charge which was preferred against Claimant was due to an accident sustained by another employe on April 7, 1947.

The record fully describes the location of the accident. At approximately 8:00 A. M., on April 7, 1947, orders were issued by the Foreman to remove all transfer plates and that the doors of the cars be closed, as the track was being readied to be pulled. At approximately 8:30 A. M., Claimant arrived on the scene with two truckloads of freight for a car located in Spot 507, the car being located on Track 5, or the middle track. Claimant Lee testified at the hearing regarding what happened just prior to and at the time of the accident, in accordance with the transcript:

"A. We had two truck loads of freight to put into car at 507 spot, and we asked the Foreman if he wanted us to put it in there or were we to get the bills reblocked; he said to put the freight in the doorway of the car at 507 spot, and to throw the plate and get it in there before they closed the car door. The other trucker passed me the plate thru 607 spot, and we were in a hurry, and he handed

me the plate upside down. I reversed the plate, right side up, and stood beside the plate and dropped it. Just as I did Johnson stepped in front of it, just as I released the plate the other trucker shouted 'there goes a man.'"

It is contended that, by reason of the orders given by the Foreman, Claimant was not permitted to exercise independent judgment, and had no other alternative than to comply.

While Claimant was obeying the orders given, other employes acting on previous orders given by the same Foreman were closing doors of the cars; that such act is generally worked from the ground, the height of the car door from the ground being approximately five feet and the width between the cars two feet; that working under abnormal conditions, he dropped the plate, striking another employe who was evidently closing doors of cars from the ground, and who appeared on the scene suddenly.

Rule No. 2021 provides:

"When lifting or placing transfer plates by hand, have secure hold to prevent plate from slipping or falling. Drop plate away from body, first making certain it is safe to do so. When practicable, use trucks to place transfer plates."

Also see Rules 2020, 2022, 2024, 2025 and 2027.

Contributory negligence on the part of the Foreman is alleged in the issuing of orders to speed up an operation when it was not necessary. This Foreman was not called upon to testify why he issued orders contrary to the Safety Rules cited above.

Carrier cites the evidence given by the Claimant at the trial on the theory that negligence was admitted. Among other testimony, the following is cited:

"Q. Before you dropped the plate did you look out of the car door at 607 spot to determine if there were any men closing doors?"

A. No I didn't look up or down the track. I just looked directly out of the car door into the cellar."

Cited on behalf of Carrier are Awards 373, also *Robertson v. Panhandle and S. F. Railway Company*, 77 S. W. (2nd) 1078:

"Disobedience of reasonable rules of the employer which are known to the employe constitute just grounds for discharge."

Also to the same general effect are cited *Adams v. Southern Pacific Company*, 226 Par. 541; *Alton, et al. v. Railroad Retirement Board*, 295 U. S. 330, 55 Sup. Ct. 758, (1935). The last cited cases were on the proposition that the Employer's rights to disciplinary measures for violation of rules and regulations, which are reasonable, will not be interfered with by Congress, State Legislatures, or the Courts.

Safety Rules are of the greatest importance to Carriers by reason of the very nature of general transportation operations. While there are undoubtedly some extenuating circumstances in this case, yet they are not of a nature which is deemed to be sufficient to overrule the action taken by the Carrier in the disciplinary measures assessed.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1949.