

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award Number 21129  
Docket Number CL-21385

Walter C. Wallace, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and station Employees  
(  
( St. Louis-San Francisco Railway Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8022) that:

1. Carrier violated the terms of the Agreement between the parties when, by letter of April 23, 1975, it dismissed from service Mr. W. V. Plaster, clerk, at Springfield, Missouri, without proving the charges against Mr. Plaster as set forth in the notice of investigation of April 9, 1975.

2. Carrier shall now compensate Mr. Plaster for all time lost during this dismissal and his record cleared of these charges, as provided in Rules 26 through 31 of the Clerical Agreement.

**OPINION OF BOARD:** The claimant was charged with violation of instructions in handling dangerous cars in trains. Specifically, he was charged with violating that part of the Rule 702, reading "Employees who are negligent or indifferent to duty. . . will not be retained in the service." Further, he is charged with violating the entire Rule 727 of Rules of Transportation Department. The allegations arose in connection with his alleged failure to properly mark list and examine waybill of ACSX 933057, compressed gas, of inbound train No. 61 of April 7, 1975, resulting in departure in outbound train SYKC-1, 4:45 pm, April 7, 1975, as second car ahead of caboose.

An investigation and hearing was held on the property and as a consequence claimant was found to have violated the above-mentioned rules and dismissed from the service. The claimant's seniority dates from 1940. It is alleged that the Carrier violated the agreement insofar as it dismissed the claimant from service without proving the charges against him, as set forth in the notice of Investigation. As a consequence claimant seeks reinstatement, back pay and to have the record cleared of these charges in accordance with Rules 26 through 31 of the Clerical Agreement.

On January 3, 1975, Congress passed Public Law 93-633, the Transportation Safety Act of 1974 whose short title is "Hazardous Materials Transportation Act". The purpose of this legislation was to regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials and for other purposes. In its declaration of policy in Section 201 of the Act it is stated:

"It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials to commerce."

In Section 103(2) of the Act, hazardous materials are defined as follows:

"Hazardous materials means substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce."

Section 104 of the Act designates compressed gases as a hazardous material and it is uncontested that the gases involved here come within such definition, thereby invoking the provisions of the Act. The specific substance involved is anhydrous ammonia.

The train under consideration here arrived in the Springfield Yard at 10:00 am, April 7, 1975 and the advance consist that was received prior to the arrival of the train shoved:

"5 ACSX 933057....DANGER - NONFLAMMABLE COMPRESSED GAS."

It is clear that when Train No. 61 arrived in the Springfield Yard it was the responsibility of the Chief Yard Clerk, the claimant here, to check the train and make a written switch list for the use of yardmasters and switch crew.

It is uncontested that claimant failed to perform his duty and designate the above-mentioned car as dangerous. In claimant's submission this failure is designated an "oversight" by a low-salaried employee caused by his busy schedule. We do not see it that way. His failure to carry out his assigned responsibilities set in motion a predictable chain of events that could have resulted in a disaster in violation of the law, the rules, and the instructions of the Carrier. Because of his failure the yardmaster and the yard crews were permitted to switch this dangerous car within the train yard during the day on April 7, 1975 without knowing they were dealing with a dangerous car. Thereafter they were permitted to place this car in the outbound train in an improper position, two cars ahead of the caboose when it should have been placed at least six cars from the engine or the caboose.

Claimant ended his duty at 3:59 pm, April 7, 1975 and the outbound train departed the Springfield Yard at 4:45 pm that same day. Immediately after departure the train conductor became aware of the fact that he had a dangerous car in the train. He radioed the yardmaster on duty of this fact.

He was promptly informed that the yardmaster would take the necessary steps to switch cars and bury the dangerous car. Thereafter, the conductor concluded erroneously that the car was properly placed in accordance with the regulations and he notified the yardmaster that he would proceed with the train as it was. None of these happenings absolve claimant and they cannot be asserted by him as a basis for evading responsibility.

Similarly, we find that the errors of the Clerk Reedy, whatever form they may take, do not serve to diminish the claimant's responsibilities. These are not the only excuses offered by claimant as a basis for evading responsibility: he claimed that he did not have enough help in that certain positions had been abolished and his responsibilities increased; pressure had been placed upon him to get the list out and he was not able to work properly under pressure; he cannot be held responsible for people under his supervision; his job involved many distractions including interrupting phone calls; and he could not read all waybills.

It is not the function of this Board to substitute its judgment for that of the trier of facts. Here we conclude that the Carrier based its conclusions on substantial evidence in the record to the effect that claimant failed to carry out his responsibilities properly and as a consequence his actions amounted to negligence and indifference to his duty. The burden of proof has been amply satisfied and the investigation and hearing was conducted fairly and impartially.

There remains only the question of the penalty assessed by the Carrier in this case. His service dates back to 1940 and a long service employee with a good record would normally be entitled to every consideration. That is not the case here. In August, 1954, he was cited for failing to issue an explosive notice to a train crew. In December, 1954, he was cited for failing to notify the train crew that a car carried an explosive placard. The next year, June, 1955, he failed to notify the train crews that two cars carried explosive placards. In addition to the above, the record reflects that claimant, over the years, has been cited more than twenty times for failures in performance. Included are three occasions when he was dismissed from the service. He was reinstated each time and the record does not reflect the circumstances involved. Despite his long service in years the claimant is not entitled to any special consideration based upon this record. The Carrier cannot be accused of capricious and arbitrary action in dismissing this employee. The opposite is closer to the truth. Against this background it should be pointed out that a return of this employee to duty, followed by a further negligent action and injury to others would subject this employee to and justifiable criticism.

On behalf of the claimant it is alleged that his dismissal is discriminatory insofar as others have not been so severely punished for their violations of the rules. Under the circumstances here we find no merit in

this contention. The train conductor received punishment consistent with his long, unblemished record. Apart from this, however, we are clearly of the view here that these rule violations cannot be excused by pointing to the derelictions of others. Accordingly, we find no violation of the agreement.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

. That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.