

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Charles Madis, Section Foreman, Bridgeport, Colorado, dismissed on October 2, 1943, and reinstated to the service on February 16, 1944, without pay for time lost, shall be paid for time lost equal to the amount that he would have earned as section foreman at Bridgeport, Colorado, from October 2, 1943, to February 16, 1944, inclusive.

OPINION OF BOARD: Claimant, a Section Foreman, was instructed to tighten the bolts on a loose rail joint and failed to do so. He was dismissed but several months later was reinstated with seniority rights unimpaired upon intercession by the Organization.

The Organization lays some stress on an alleged agreement that Carrier would make a satisfactory settlement for the time lost. However, this was not regarded as settled even by the Organization because on Claimant's return to work the right to prosecute this claim was reserved to the Organization without being prejudiced by Claimant's return. Up to such time Carrier had refused to make any payment for the time lost. The record does not show any final agreement was made.

The evidence is not disputed that Claimant failed to tighten all the bolts on the joint. It is conflicting as to whether he tightened any of the bolts.

The track patrolman testified he was helping Claimant and stated with reference to a question about a bolt which could not be tightened because it turned:

"Q. Why didn't you take out the bolt and put in a new one?

A. I suggested to do so but Mr. Madis said to wait until morning, it was night and he said wait until morning and he would fix it then."

Four days later the track supervisor found the bolts loose and a lip of about a fourth of an inch on the joint with no evidence that the bolts had been recently tightened.

The evidence is amply sufficient to sustain the charge. Accordingly, Carrier did not act arbitrarily and we may not disturb its action in this matter. The claim should be denied.

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 record shows evidence sufficient to sustain Carrier's action.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1945.