

Award No. 4913

Docket No. 2912

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

The First Division consisted of the regular members and in addition Referee Paul W. Richards when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

CHICAGO GREAT WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Yardmen W. J. Frissell and L. D. Chevaleir, Dubuque, Iowa, dated February 6 to 15, 1936, inclusive, claiming one yard day each date account improper investigation.

EMPLOYEES' EX PARTE STATEMENT OF FACTS: The above named yardmen, regularly assigned to the 10:00 A. M. engine at Fair Ground, Dubuque, Iowa, were making movements on the team track at downtown Dubuque, and had to take cars off said track to make room for another car to be placed thereon. During the period that they were after the car to be placed, a truck drove up to one of the cars from which they were unloading, and the crew, in coming against this track, knocked one of the truck men against the car door, this accident occurring on January 18, 1936.

Foreman Chevaleir immediately went up to the car where these men were unloading, after the engine and cars came against the track, and inquired whether or not any one was hurt, and he was advised "No," which accounts for no accident report (form 321) having been made out by him.

On January 21, the accident was reported to the officers through one of the truck men making claim for injuries sustained, for which it is understood settlement of \$10.00 was made.

Yardmen Frissell and Chevaleir were ordered to attend an investigation on February 6, at Oelwein, Iowa, nineteen (19) days after the accident occurred and sixteen (16) days after the accident was reported to the officers of the Company. They were given a ten day suspension from service, the results of the investigation not having been made known to them until February 11, 1936, when they appeared at the paymaster's window for their pay checks, five (5) days after the investigation was held.

Claim was made for pay for all time lost as a result of not having been properly notified of the discipline assessed within the time limit specified under the rules.

Section 20, Article 21, S. U. of N. A. Agreement, reads as follows:

"Yardmen taken out of service for cause shall be given a hearing within five days and if held a longer time, will be paid for all time so held, at their regular rates of pay.

"The results of the investigation shall be made known within three days after the hearing."

POSITION OF EMPLOYEES: It is the position of the Employees that this investigation should have been held within five (5) days after having been first reported to the Carrier, and that the decision inflicting penalty should have been made known not later than February 9, three (3) days thereafter.

The Carrier has contended that the results of this investigation were made known on the day following, February 7, which does not coincide with the statement made by the claimants and, for the information of the Board, the Employees quote herewith letter addressed to claimant Frissell under date of April 29, 1936, over the signature of the General Chairman:

"Referring to your claim dated February 6 to 15, 1936, inclusive, making a total of nine yard days account held out of service, given an investigation and suspended for a period of ten days, which matter I appealed to Mr. Kennedy under date of April 14, 1936, copy of which was furnished you.

"I am now in receipt of a reply from Mr. Kennedy, wherein he advises that the Trainmaster held the investigation strictly in accordance with Section 20, Article 10, of the Yardmen's Agreement, and advises that the discipline handed down to yourself and Brother Chevaleir was assessed on the following day after the investigation, which, of course, does not measure up to the facts as I submitted them in my appeal to Mr. Kennedy.

"Will you please advise me whether or not you were in any way advised of this discipline on the date next following the investigation and whether or not your first knowledge of the discipline assessed reached you at any time prior to February 11, the date mentioned in your letter to me under date of February 11, 1936?"

"Kindly let me have this information promptly in order that there will be no further delay in the handling of this appeal."

And to which Mr. Frissell replied, under date of April 2, 1936:

"This investigation was held on February 6, as you know, and we were advised to return home and we would be notified later. Pay day fell on February 11 and on this day I presented myself at the paymaster's window. It was then I was informed of the ten day discipline, which was in letter form and a request to sign for same, which we did, placing the date just below.

"At no other time or in no other way were we informed as to what discipline we were assessed.

"Mr. Chevaleir and I were in the office at the same time."

The attention of the Board is called to the fact that the undersigned directed a letter containing a full statement of facts and position in this case to General Chairman, Mr. J. E. Hart, of the Switchmen's Union of North America, under date of May 5, 1936, asking whether or not the position taken by this committee was proper and correct, and in line with his interpretation of the rule herein quoted, requesting him to advise and furnish the Carrier with a copy thereof, and to which letter no reply was made.

The Employees contend that the rule quoted specifically provides that investigations will be held within five (5) days and that the results of same will be made known within three (3) days thereafter, and the Carrier, having failed to comply with those provisions, violated the rule and is required thereunder to compensate the claimants for all loss as a result of such improper investigation, and the Board is respectfully requested to so decide.

CARRIER'S STATEMENT OF FACTS: The above named Yardmen, regularly assigned to the 10:00 A. M. yard shift in Dubuque yard, were switching cars on team tracks, Dubuque, at approximately 3:00 P. M. Saturday, January 18, 1936. Truck owned by Guinta Brothers was unloading FGE 32312, carload of apples, on No. 3 West Team Track. Tony Guinta was working inside of car handing boxes of apples to Charles Cole, driver of truck, latter loading same onto truck. Just as Cole was reaching for a box from man in car, the car was struck by yard engine in charge of Foreman Chevaleir and Helper Frissell, and the door of car knocked Cole, together with his box of apples, to the ground, box falling on his chest causing injury. Cars were coupled onto without warning being given to the men working in or about them. This accident occurred on January 18th. First report of it from Foreman Chevaleir was February 2d, fourteen days later, although the Trainmaster requested a report from him on January 23d. On February 4th, two days subsequent to Chevaleir making his report, he and his helper, Frissell, were notified to appear at Division Superintendent's office, Oelwein, Iowa, for investigation, 10:00 A. M. February 6th. Investigation was held on said date, conducted by Trainmaster Lorden. On February 7th Trainmaster Lorden addressed a letter to Foreman Chevaleir and also an identical letter to Helper Frissell, reading:

"For your responsibility in connection with the accident wherein Charles Cole was injured while unloading from FGE 32312 on 3-West team track, Dubuque, Iowa, January 18th, 1936, your record is assessed ten (10) days actual suspension and in addition twenty (20) demerits.

I trust the handling given has impressed you to the extent that there will never be a recurrence.

Kindly acknowledge receipt hereon."

Dubuque Yard being located at an outlying point where the Yardmen are under the jurisdiction of the Agent, Trainmaster Lorden addressed the following letter to the Agent at that point, dated February 7th:

"Enclosed are discipline letters to Switchman L. C. Chevaleir and Switchman W. J. Frissell, for their acknowledgment by signature on face of their individual letters, and then return to me. Please handle.

Also, please see that these men resume service after February 15th, in accordance with assessed discipline.

Please acknowledge your understanding and return attached promptly."

The Employees' Committee is not making a claim because the employees involved were unjustly dealt with or that they were not responsible for the accident but solely upon the grounds that they were not notified of the discipline assessed within three days, as provided in the following rule in Switchmen's Union of North America agreement covering Yardmen, dated January 20, 1936:

"Section 20. Yardmen taken out of service for cause shall be given a hearing within five days if demanded, and, if held a longer time, will be paid for all time so held, at their regular rates of pay.

Yardmen shall have the right to have an employe of their choice present at investigations; and shall have the right to appeal to the higher officers of the railroad, in case the decision is unsatisfactory.

In case the suspension or dismissal is found to be unjust, the yardmen shall be reinstated and paid for all time lost.

The result of the investigation shall be made known within three days after the hearing."

POSITION OF CARRIER: As set forth in the Carrier's statement of facts, the accident referred to occurred on January 18th and Foreman Chevaleir made no report of it at the time. The officers, however, learned of the accident on January 21st and on the 23d Trainmaster Lorden wrote Chevaleir requesting a prompt report of the occurrence. Chevaleir did not reply to the Trainmaster nor did he furnish a report until February 2d, ten days after it was requested, which to say the least displayed carelessness and lack of interest on his part. On receipt of the report February 2d Chevaleir and Frissell were notified on February 4th to report at Oelwein, Iowa for investigation at 10:00 A. M. February 6th, at which time and date investigation was held. On the following day, as shown in the Carrier's statement of facts, these employes were notified that they were suspended for ten days in addition to their personal records being assessed twenty demerits.

During the investigation each admitted violating the rules with respect to coupling onto or moving cars spotted on team or house tracks without first ascertaining whether or not there was anyone working in or around the cars. The investigation was held strictly in accordance with Section 20, Article 10 of Yardmen's Agreement in effect with the Switchmen's Union of North America, quoted in statement of facts. All provisions of this section were complied with. Proper investigation was held within five days from the time the matter was first reported to the operating officers by Foreman Chevaleir. The Board's attention is called to the fact that Section 20, quoted in the Carrier's statement of facts, does not require an investigation being held at all unless demanded by the yardman himself. Regardless of that fact, the investigation was held the first day they were out of service and they were advised of the discipline assessed on the following day. These men admitted they were at fault, therefore they were not disciplined unjustly. As previously stated, the investigation was held strictly in accordance with the rules, therefore it must be obvious that the position taken by the employes at the investigation was improper and not based upon facts.

The Board's attention is further directed to the fact that the Brotherhood of Railroad Trainmen holds no contract with the Carrier governing employes in yard service, therefore the claim is presented to this Board based upon a contract held by another organization and without their interpretation upon the rules involved.

Oral hearing is requested.

FINDINGS: The First 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.

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The parties to said dispute were given due notice of hearing thereon.
An affirmative award is justified by the record in this case.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

ATTEST: (Sgd.) T. S. McFarland
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.