

Award No. 2044
Docket No. 1910
2-PULL-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier unjustly dismissed Car Cleaner Lindsay Orr from the service on September 13, 1954.

2. That accordingly the Carrier be ordered to restore him to service with seniority rights unimpaired and compensated for all time lost retroactive to the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: Car Cleaner Lindsay Orr, hereinafter referred to as the claimant, was continually employed by The Pullman Company, hereinafter referred to as the carrier, at the Cincinnati Union Terminal Yards, since October 15, 1941, until September 13, 1954, when his employment relations of nearly thirteen (13) years were terminated. During World War II, three (3) years of this time, from January 29, 1943, to January 29, 1946 was spent in the armed forces by the claimant.

The carrier's foreman, J. H. Lankheit summoned the claimant to appear for a hearing on August 24, 1954, at 10:00 A. M. on the alleged charge of being absent from work without permission on fifteen (15) work days from March 21 to July 26, 1954, inclusive, and which is affirmed by letter dated August 17, 1954, copy of which is submitted herewith and identified as Exhibit A.

The hearing was held as scheduled and a copy of the transcript of such hearing is submitted herewith and identified as Exhibit B.

The carrier's Foreman Lankheit, made the election to discharge the claimant effective at the close of his shift, September 13, 1954, which is affirmed by letter dated September 13, 1954, copy of which is submitted herewith and identified as Exhibit C.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

past record when, after the employe has been found guilty of the charges made against him, discipline is being imposed. This for the reason that what might be just and fair to impose upon an employe whose past record has been good might, and probably would be, entirely inadequate for an employe whose past record has been bad. It should be understood that such past record should in no way be considered in determining the guilt or innocence of the party as to the charges for which he is being tried.

In view of claimant's past record, considering the nature of the charge of which she has here been found guilty, we do not find the discipline imposed to be either unreasonable, excessive or arbitrary."

Also see Second Division Award 1924 and Third Division Awards 430, 599, 2498, 2772, 3235, 3986 and 4269.

CONCLUSION

In this ex parte submission the company has shown that on 15 work days, March 21, April 9, 11, May 2, 5, 15, 29, June 9, 22, 28, July 5, 6, 9, 23 and 24, 1954, Orr absented himself from work without permission and failed to advise his supervisor of his intention not to report or his inability to do so. Further, the company has shown that awards of the National Railroad Adjustment Board support the company's position in this dispute.

The National Railroad Adjustment Board has repeatedly held that where the carrier has not acted arbitrarily, without just cause or in bad faith, the judgment of the Board in discipline cases will not be substituted for that of the carrier. In Second Division Award 1323, Docket No. 1256, the Board stated:

"... it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (See also Second Division Awards 993, 1041, 1109, 1157, 1253 and Fourth Division Award 257.)

Also, in Third Division Award 2769, Docket No. PM-2677, the Board stated, under OPINION OF BOARD, as follows:

"... In its consideration of claims involving discipline, this Division of the National Railroad Adjustment Board (1) where there is positive evidence of probative force will not weigh such evidence or resolve conflicts therein, (2) when there is real substantial evidence to sustain charges the findings based thereon will not be disturbed; (3) if the Carrier has not acted arbitrarily, without just cause, or in bad faith its action will not be set aside; and (4) unless prejudice or bias is disclosed by facts or circumstances of record it will not substitute its judgment for that of the Carrier." (See also Third Division Awards 419, 431, 1022, 2297, 2632, 3112, 3125, 3149, 3235, 3984, 3985, 3986, 5011, 5032, 5881 and 5974.)

The company submits that the dismissal of Car Cleaner Lindsay Orr from service on September 13, 1954, was justified. The organization's request that the carrier be ordered to restore him to service with seniority rights unimpaired and compensate him for all time lost is without merit and should be denied.

FINDINGS: The Second 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.

The parties to said dispute were given due notice of hearing thereon.

The claimant was dismissed from the service following an investigation. The evidence brought out at the investigation was to the effect that claimant had absented himself from work without permission on several occasions and that he failed to furnish advice of his intention not to report or his inability to do so.

There is evidence before us which shows that the claimant had been given a warning for similar violations which had occurred during the year preceding the year of the violations for which he was dismissed.

Rule 30 of the effective agreement provides that employes who are unavoidably kept from work shall not be discriminated against. The remaining portion of the rule further provides that employes detained from work on account of sickness or for any other good reason shall notify their supervisors in advance if possible or as early as practicable. The claimant failed to notify his supervisor in accordance with the provisions of that latter portion of Rule 30 and it is for that reason the discipline was administered.

It is our opinion that the carrier's action should be affirmed. The claimant had been apprised of his obligation under the terms of the agreement when he was previously warned for prior infractions. The carrier is entitled to some degree of stability in its working force and it did not discriminate against the claimant in light of the claimant's record of flagrant violations of the second sentence of Rule 30.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.