

**Award No. 1924**

**Docket No. 1778**

**2-Pull-CM-'55**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.**

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**PARTIES TO DISPUTE:**

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

**THE PULLMAN COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That the Carrier's refusal under the current agreement to reinstate Carman Helper Frank Taylor on or before November 2, 1953, is unjust, and that accordingly the Carrier be ordered to reinstate him to all service rights unimpaired and compensate him for all time lost.

**EMPLOYEES' STATEMENT OF FACTS:** The Pullman Company, hereinafter referred to as the carrier, employed Frank Taylor, hereinafter referred to as the claimant, on July 15, 1941 as an upholsterer helper at the Calumet Shop, Chicago, Illinois, and his regularly assigned hours on November 2, 1953 were from 7:45 A. M. to 4:30 P. M., Monday through Friday, rest days Saturday and Sunday.

The carrier preferred charges against the claimant on November 2, 1953 of being under the influence of intoxicants while on duty in the upholstery department, Calumet Shops.

The claimant's hearing was scheduled for 10:00 A. M., November 10, 1953. Upon request from Local Chairman John Larkers, the meeting was postponed because the claimant was under the care of a physician and unable to attend hearing. The hearing convened at 10:05 A. M., February 15, 1954 and was concluded that day at 11:00 A. M. A copy of the hearing transcript is submitted herewith and identified as Exhibit A.

On March 2, 1954, the carrier elected to discharge this claimant from the service and a copy of the letter from Shop Manager W. D. Lundberg to the claimant is submitted herewith and identified as Exhibit B.

The dismissal of this claimant has been handled in accordance with the current agreement up to and with the highest designated officer to whom such matters are subject to appeal, with the result that this office has declined on more than one occasion to settle this dispute on any basis, for the reason stated in copies of letters submitted herewith and identified as Exhibits B, C and D respectively.

previous incidents extended only to the question of the degree of discipline to be assessed Taylor if the evidence of record established the fact of Taylor's guilt. The right of management to consider the past record of an employe in determining the proper degree of discipline has been affirmed in numerous awards of the National Railroad Adjustment Board. Typical of these awards is Third Division Award No. 3986, wherein the Board stated:

" . . . We can not try claimant of this record of past service, or use it in determining his guilt or innocence on the four specific charges now pending; but if, without considering his past record, we find him guilty of such charges, then we may consider his past record in determining whether the penalty imposed was justified, or too severe. . . ."

The first of the previous incidents considered by Manager Lundberg occurred on June 27, 1952, at which time Taylor failed to comply with instructions of his supervisor, became abusive, and addressed obscene language to Leader George H. Newgren. For his improper conduct on this occasion Taylor's record was assessed with a "Warning." The second incident considered by Manager Lundberg occurred on October 2, 1952, at which time Taylor made use of abusive and obscene language toward Helper A. Monroe, which led to a physical encounter resulting in injury to Taylor. For his improper conduct on this occasion, Taylor was discharged from service on October 30, 1952, but was restored to service without pay on January 12, 1953, on an appeal for leniency by the organization. Consideration of Taylor's service record clearly established that the discipline imposed upon Taylor in the instant case was entirely justified.

### CONCLUSION

The Pullman Company has shown by the testimony of credible witnesses that Carman Helper F. H. Taylor appeared on duty November 2, 1953, under the influence of intoxicants, as a consequence of which it was necessary to issue him a pass and instruct him to leave the premises at approximately 8:20 A. M. The Pullman Company has also shown that in view of two previous incidents which appeared on Taylor's service record, the discipline imposed upon him was fully warranted.

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 No. 1323, Docket No. 1256, this position is clearly 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. . . ."

In view of the convincing evidence of record, the company's disciplinary action with respect to Carman Helper Taylor clearly was not arbitrary, without just cause, or in bad faith. Therefore, the company's action should not be set aside. A denial award is requested.

**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.

Claimant, a carman helper, was found after formal investigation to have been under the influence of intoxicants, as charged, while on duty on November 2, 1953.

Four witnesses to the fact stated that he was staggering and under the influence of intoxicants; three of them that there was the smell of liquor on his breath, and two of them that his speech was incoherent. All stated that he complained only of pain in his back at the time. At his request his committeemen were called in, and they suggested that he leave the plant, which he did.

At the investigation he said that the pain in his back was from a cold and that his seeming intoxication was a result of sedatives taken under direction of his physician, but this attempted explanation was not supported by the letter submitted from his physician, or otherwise.

In view of such evidence and claimant's past record, we cannot say that the finding was without substantial support or that the dismissal from service was an arbitrary or excessive penalty.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May, 1955.