

Award No. 1942

Docket No. 1801

2-Pull-EW-'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.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, Electrician R. M. Thornton, considers that he was unjustly treated when his record was assessed with three warnings.

2. That accordingly the Carrier be ordered to clear his record card of these warnings.

EMPLOYEES' STATEMENT OF FACTS: Electrician R. M. Thornton, hereinafter referred to as the claimant was employed by the Pullman Company as an electrician at the St. Louis District on September 14, 1944 and has been in their service ever since.

Under date of September 29, 1953, the claimant was notified to appear for a hearing at 9:30 A. M. October 2, 1953. A copy of said notification is submitted herewith and identified as Exhibit A.

Hearing was started on October 2, 1953, recessed until October 22, 1953, and completed on this date. A copy of the hearing record is submitted herewith and identified as Exhibit A.

On November 19, 1953, F. J. Hellweg, foreman, St. Louis, Missouri, notified the claimant that his record card would be assessed with three warnings. A copy of this notification is submitted herewith and identified as Exhibit B.

On December 31, 1953, we appealed this decision of Mr. F. J. Hellweg. A copy of this appeal is submitted herewith and identified as Exhibit C.

On February 17, 1954, Mr. Dodds, appeal officer, The Pullman Company denied this appeal. A copy of this denial is submitted herewith and identified as Exhibit D.

This dispute has been handled in accordance with the provisions of the current agreement, effective July 1, 1948, with the highest designated officer

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 2796, 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.)

CONCLUSION

The Pullman Company has shown that:

- (1) Thornton failed properly to perform servicing Items 69 and 71 on car THOMAS A. HENDRICKS on July 17, 1953, and that by reason thereof, the notation made by him on the record of repairs card showing that the car had been accorded an "M" inspection is a falsified entry.
- (2) Thornton failed properly to perform a "W" inspection on car POPLAR HILL on July 25, 1953, contrary to the instructions given him by his supervisor and, instead, performed a "D" inspection.
- (3) Thornton failed properly to perform a "D" inspection on car CROTON FALLS on July 25, 1953, since it was proved that shortly after he allegedly completed his work, the car had an improper relay in the cooling pilot relay circuit, which was improperly connected, and that the car had no circulation of air, which defects should have been discovered in the course of checking the operation of equipment as required by the servicing procedure instructions.

Additionally, the Company has shown that the three "Warnings" assessed against Electrician Thornton's record was reasonable and just in light of the infractions.

For these reasons the company maintains that the organization's claim in behalf of Electrician Thornton 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.

Claimant was given regular hearing on three charges:

1. Of failure to perform items 69 and 71 of monthly inspection on car T. A. Hendricks and falsification of car maintenance record card by indicating complete monthly inspection.
2. Of failure to perform weekly inspection of car Poplar Hill as instructed.
3. Of failure properly to make a daily inspection of car Croton Falls.

Each of the charges was found substantiated by the evidence and he was assessed with a "warning" with respect to each charge. Thereby it is claimed that he was unjustly treated and that carrier should be ordered to clear his record of the charges.

A detailed discussion and analysis of the record would be without value.

As to Charge No. 1, claimant in substance admitted that he marked up a complete "M" inspection but says his other work called him away and he did not have time to complete it. He marked up an "M" inspection both on his servicing report and record of repairs card. Upon spot check afterward it was found among other things that one floor heat valve was stuck and that the pump motor circuit was improperly fused with 30 A fusetrons instead of 25 A as prescribed. If, as he testified, there were no 25 A in stock, he failed in his duty to report it.

As to Charge No. 2, claimant had written instruction to give the car a "W" inspection. He returned the car defect card showing "W" inspection, but turned in his servicing report showing "D" inspection together with three "W" items, and on his record of repairs card he failed to show what type of inspection had been made. He states as excuses that his foreman was primarily interested in finding out what had caused a cooling failure on the car, which he located; that the car was not due a "W" inspection, and that he did not have time to finish the inspection but failed so to report. If true, they do not excuse his failure to obey instructions nor account for such inconsistent reports, and carrier's business cannot be run with any success on such confusing records.

As to Charge No. 3, claimant reported a "D" inspection on his record of repairs card and servicing report, but the Assistant Foreman on inspecting the car before its departure found the filters overdue for exchanging and completely stopped up, and the cooling pilot relay not operating properly. Claimant's carelessness in making up his reports is evidenced by the fact that his servicing report was marked to show that he had inspected three items of equipment which the car did not have. There was evidence to the effect that ordinary "D" inspection might not have caught the defects found uncorrected, but there was substantial evidence to support finding that they should have been discovered. No prejudice or arbitrary action appears.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1955.