

Award No. 2010

Docket No. 1871

2-PULL-EW-'55

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 EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current Agreement, Electrician Max Ellberger, considers that he was unjustly treated when his record card was assessed with a Warning.

(2) That accordingly the Carrier be ordered to remove the notation from his record card.

EMPLOYES' STATEMENT OF FACTS: Electrician Max Ellberger, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the Pennsylvania Terminal District on January 31, 1951, and has been in their service ever since.

Under date of March 26, 1954, the claimant was notified to appear for a hearing at 2:30 P. M. on April 5, 1954. A copy of said notification appears in the hearing record, copy of which is submitted herewith and identified as Exhibit A.

A postponement of hearing was requested by the claimant and granted by the carrier setting a new date for the hearing on April 12, 1954. Copies of correspondence dealing with the postponement appear in the hearing record, are submitted herewith and identified as Exhibit A.

Hearing was conducted on April 12, 1954, by R. Bucherati, general foreman, Pennsylvania District, a copy of the hearing record is hereby submitted and identified as Exhibit A.

On May 7, 1954, R. Bucherati, general foreman, Pennsylvania District, notified the claimant that his record would be assessed with a warning. A copy of notification is hereby submitted and identified as Exhibit B.

This dispute has been handled in accordance with the provisions of the current agreement, effective July 1, 1948, as subsequently amended, with high-

In Second Division Award 1767, rendered May 26, 1954, with Judge Edward F. Carter sitting as referee, the Board ruled as follows in a not unlike case involving the same parties:

“ . . . Claimant and Electrician Sparkman replaced a belt on the driven unit at Chicago. To do this they were required to get under the car and come in close proximity to the driven unit and the safety bracket. We think the evidence shows that these two electricians should have observed the loss of bolts and cap screws, and the loose condition of the safety bracket. The exercise of reasonable care on the part of these men while performing the work they admittedly did, would have revealed the defects if only a casual inspection had been made. . . .”

Had Ellberger exercised reasonable care, he would have observed the defective condition of the axle pulley and bushings on car PINNACLE TOWER. Since he failed to do so, the discipline imposed upon him, a “Warning,” was warranted.

CONCLUSION

In this ex parte statement, The Pullman Company has shown that Electrician Ellberger was assigned jointly with Electrician Farrell to apply cog belts over the axle pulleys and driven unit pulleys of car PINNACLE TOWER on March 15, 1954. The company has shown also that Ellberger admitted that he personally applied one of the cog belts to the car, a task which required him to come into close proximity with the axle pulley. The company has shown, additionally, that an inspection of car PINNACLE TOWER undertaken the following morning disclosed that the axle pulley about which Ellberger had worked was out of alignment and that bushings on the right and left side of the axle pulley were out of position, defects which kept the car out of service on Pennsylvania train No. 127 the following morning. Finally, the company has shown that the warning imposed upon Ellberger for his failure to detect the defective condition of the axle pulley and bushings was entirely justified.

The organization's claim in behalf of Electrician Ellberger 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 the dispute were given due notice of hearing thereon.

The claimant's record was assessed with a warning because he allegedly failed to observe a defect in an axle pulley when applying a set of cog belts to a car.

The record indicates that the claimant and Electrician Farrell were instructed to apply the belts in question. Farrell made the actual application while claimant's part in this episode was to cut and shape the belts and to hold a light.

It is our opinion that the claimant's record should not have been marked. Farrell, a qualified electrician, was the employe in a position to make the

observation and was taken out of service for ten days as the result of disciplinary action of the carrier for his failure to make proper observation.

The facts and circumstances of this case fail to uphold the carrier in its position.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1955.