

Award No. 2014
Docket No. 1893
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 C. L. North was unjustly treated when he was suspended from service for five work days during the period from October 4 to 11, 1954.

(2) That accordingly the Carrier be ordered to compensate him for the wage loss suffered by him during the period of October 4 to 11, 1954.

(3) That accordingly the Carrier be ordered to clear his record of this charge.

EMPLOYES' STATEMENT OF FACTS: Electrician C. L. North, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the New Orleans District on April 25, 1935, and has been in their service ever since.

Under date of August 27, 1954, the claimant was notified to appear for a hearing at 9:30 A. M. September 2, 1954. A copy of said notification appears in the hearing record, page 1, which is hereby submitted and identified as Exhibit A.

On October 1, 1954, E. J. Saucier, foreman, New Orleans District, notified the claimant that he would be suspended from service for five work days during the period of October 4 to 11, 1954. A copy of this notification is hereby submitted and identified as Exhibit B.

On October 12, 1954, we appealed this decision of Mr. E. J. Saucier. A copy of this appeal is hereby submitted and identified as Exhibit C.

On December 6, 1954, appeal officer, The Pullman Company denied this appeal. A copy of this denial is hereby submitted and identified as Exhibit D.

This dispute has been handled in accordance with the provisions of the controlling agreement, effective July 1, 1948, as subsequently amended, with the highest designated officer to whom such matters are subject to appeal, with the result that this officer declined to adjust this dispute.

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.)

CONCLUSION

In this ex parte submission the company has shown that on the morning of August 13, 1954, Electrician North absented himself from the yard without permission. His improper action was observed and reported by Foreman Saucier and Assistant Foreman McDonald. The organization's contention that Electrician North was unjustly treated when he was suspended from service for 5 work days during the period October 4—October 11, 1954, is without merit. The organization's request that Electrician North be compensated for the wage loss suffered by him and that his record be cleared of the charge 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 facts of record indicate that the claimant was charged with absenting himself from the yards without permission. The alleged violation occurred during the claimant's regular working hours.

Claimant was given a hearing which resulted in his being suspended for five (5) days as a disciplinary measure.

Evidence was adduced at the hearing which established the fact that claimant was seen off the company property by a foreman and an assistant foreman, both of whom were searching for the claimant. Claimant denied that he had been out of the yards.

Although the facts are controverted, it is our opinion that sufficient evidence was presented which, if believed, would justify the carrier's determination of claimant's guilt. The carrier so chose to believe said evidence.

It is our opinion that the carrier did not act with prejudice or in an arbitrary manner. Furthermore, the amount of discipline does not seem to be out of proportion to the offense.

AWARD

Claim denied.

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.