

Award No. 2015
Docket No. 1894
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 EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement, Electrician F. E. McKnight was unjustly treated when he was suspended from service for five work days during the period from October 11 to 18, 1954.

(2) That accordingly the Carrier be ordered to compensate him for the wage loss suffered by him during the period of October 11 to 18, 1954.

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

EMPLOYEES' STATEMENT OF FACTS: Electrician F. E. McKnight, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the New Orleans District on April 24, 1926, and has been in their service ever since.

Under date of August 27, 1954, the claimant was notified to appear for a hearing at 10:00 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 11 to 18, 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

"... 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."

Also, in Third Division Award 6105, the Board ruled as follows:

"We have often said that it is not the function of this Board to substitute its judgment for that of the Carrier or to determine what we might have done if it had been our duty to make the decision in the first instance. We interfere only where an examination of the record reveals that the action taken was unjust, arbitrary or unreasonable. Where the evidence produced in support of the charge, if believed, is sufficient to sustain it, then though there may be evidence directly in conflict, the imposition of discipline cannot be said to be unjust, arbitrary or unreasonable. It is not for this Board to determine the creditability of witnesses. If there is substantial evidence in the record to support the charge, even though contradicted, the Carrier's action in assessing discipline will not be disturbed. See Awards 2621, 4068, 5946."

CONCLUSION

The Pullman Company has shown that on the morning of August 13, 1954, Electrician F. E. McKnight in the company of another electrician absented himself from the yard without permission. The company has shown that two creditable witnesses observed McKnight off the premises during working hours. The company has shown also that there could be no mistake in the identification of Electrician McKnight inasmuch as the witnesses were entirely familiar with McKnight's appearance, the identification took place at close range, and the day was bright and sunny. The company has shown, finally, that the disciplinary action taken against Electrician McKnight was proper and under rules of the National Railroad Adjustment Board should not be disturbed.

Under the circumstances, the organization's claim that McKnight was "unjustly treated when he was suspended from service for five work days" is without merit. The claim should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

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.

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

What was said in our Award No. 2014, (Docket No. 1893) likewise applies in the instant case.

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.