

Award No. 2125

Docket No. 1957

2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter 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 T. Rhodes considers that he was unjustly treated when he was suspended from service for ten work days.

2. That accordingly the Carrier be ordered to compensate Electrician T. Rhodes for the time lost due to this suspension.

EMPLOYEES' STATEMENT OF FACTS: Electrician T. Rhodes, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the Pennsylvania Terminal District on April 8, 1952, and has been in their service ever since.

Under date of January 4, 1955, the claimant was notified to appear for a hearing at 10:30 A. M., January 10, 1955.

On February 9, 1955, R. Bucherati, foreman, Pennsylvania Terminal District, notified the claimant that he was being suspended from service for ten work days.

On February 15, 1955, we appealed this decision of Mr. Bucherati.

On April 5, 1955, Mr. Dodds, appeal officer, The Pullman Company, denied this appeal.

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

POSITION OF EMPLOYEES: It is submitted that when the charge against the claimant, as follows, is considered:

In view of claimant's past record, considering the nature of the charge of which she has here been found guilty, we do not find the discipline imposed to be either unreasonable, excessive or arbitrary."

Also, see Third Division Awards 430, 599, 2498, 2772, 3235, 3986, and 4269.

CONCLUSION

In this ex parte submission the company has shown that on November 8, 1954, Electrician Rhodes failed properly to perform repair work on car MOGOLLON. As a result of this failure, on the trip, November 8-10, 1954, New York-Williamson and return, car MOGOLLON operated in service with heating and lighting failures. The company has shown there is no validity to Rhodes' argument that he did not have sufficient time in which to complete the job assigned to him. Further, the company has shown that in determining the degree of discipline to be imposed the company properly took into consideration two previous incidents appearing on his record. The company submits that management properly imposed a 10-day suspension from service upon Electrician Rhodes for his improper action on November 8, 1954.

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 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 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.)

The claim in behalf of Rhodes 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 employed by the carrier as an electrician at the Pennsylvania Terminal District. He was charged with having failed to properly perform his duties on November 8, 1954, with the result that car Mogollon was subjected to heat and light failures on a service trip. After investigation he was disciplined by a ten (10) day suspension from service. The organization contends that the discipline was unwarranted under the record and that claimant was therefore unjustly treated when he was suspended from service.

The pertinent facts are brief. On November 8, 1954, Assistant Foreman E. F. Speece directed claimant to assist Electrician J. M. McGuckin in removing the pole changer switch from car Mogollon. McGuckin went off duty at 5:00 P. M. Claimant was held over for overtime work. He advised Foreman Nash that all that remained to be done on car Mogollon was to apply generator brushes. Claimant was directed to complete the job. He applied the brushes but failed to test the repair work and find that it was not in working order. We think the record shows that claimant failed in his duty when he did not test the repairs made on this car. He states, however, that the car was moved out in train service before he had time to motor the car and test the repairs. Assuming this to be true, claimant failed in his duty in not reporting to a supervisor his failure to properly complete his work. There is evidence, however, that he reported car Mogollon "O.K." It is evident that claimant took a chance and it resulted in a service failure on this car.

The evidence is sufficient to sustain carrier's finding that claimant negligently performed his duties. We can find no reason for disturbing the discipline inflicted by the carrier.

The organization complains of the failure of the carrier to have Foreman Nash and Assistant Foreman Speece present for examination by the claimant. The record does not show that any request was made to the carrier to have these men present. In the absence of such a request, the organization may not complain because a witness was not present for interrogation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1956.