

Award No. 2552

Docket No. 2364

2-PULL-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Electrician J. D. Bonadio considers that he was unjustly treated when he was suspended from service for twenty work days.

2. That accordingly the Carrier be ordered to compensate Electrician J. D. Bonadio for the time lost due to this suspension.

EMPLOYEES' STATEMENT OF FACTS: Electrician J. D. Bonadio, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the Pittsburgh District on January 1, 1952, and has been in their service ever since.

Under date of October 17, 1955, the claimant was notified to appear for a hearing at 9:00 A.M., October 26, 1955. A copy of said notification appears in the hearing record, Pages 1 and 2, identified as Exhibit A.

On December 9, 1955, A. Small, foreman, Pittsburgh District, notified the claimant that he was being suspended from service for twenty work days. A copy of this notification is hereby submitted and identified as Exhibit B.

On December 21, 1955, we appealed this decision of Mr. Small. A copy of this appeal is hereby submitted and identified as Exhibit C.

On January 27, 1956, Mr. Dodds, 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 current agreement, effective July 1, 1948, with the highest designated officer

2. Awards of the National Railroad Adjustment Board Support the Company in This Dispute.

The instant case is somewhat similar to a prior dispute, which dispute was settled under denial Award 1987, rendered by the Third Division, National Railroad Adjustment Board, with Elwyn R. Shaw sitting as referee. In this dispute, the employe, as in the instant case, was disciplined on the basis of reports submitted by two supervisory officers of The Pullman Company. In denying the claim that Porter Tom Mason improperly was given a 25-day suspension from service, the Board stated in part as follows:

"The discipline imposed is entirely reasonable and there is nothing for decision but a question of fact. In order to believe Mason's denial we would have to believe that two responsible agents of the Company wickedly and maliciously contrived an entire false story for no reason whatever. This we cannot do. We find no reason for disbelieving them and the claim should be denied."

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 would not be substituted for that of the carrier. In Second Division Award 1323, the Board sets forth its opinion as follows:

"* * * 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 Third Division Awards 3112, 3125, 3149; and Fourth Division Award 257.)

CONCLUSION

In this ex parte submission the Company has shown that on September 2 and September 3, 1955, Electrician Bonadio used improper language to Assistant Foreman Bak. Also, the Company has shown that on September 3 Bonadio failed properly to clean the oil spots from the floor of the electrical shop. Additionally, the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The organization's claim that Electrician Bonadio was unjustly treated when he was given a 20-day suspension from service and that he is entitled to be paid for time lost as a result of this suspension 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 employees 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 claimant, an electrician, was suspended from work without pay for a total of 20 work days on the charges that: (1) On September 2, 1955 he called an assistant foreman an obscene name and used threatening language to him, and (2) On September 3, 1955 he failed properly to perform the duty of cleaning oil spots from the floor, and used obscene and threatening language to an assistant foreman. The claimant denies the charges, and requests compensation for the time lost.

On November 9, 1955, a hearing was held on the property to take evidence from witnesses regarding these charges. Many witnesses testified, including the claimant. We have been furnished with a transcript of the testimony adduced at that hearing, which we have reviewed.

At least three witnesses testified that they heard the claimant direct language, too obscene to restate herein, at the assistant foreman. The claimant testified that he didn't recall using obscene language, but if he did it was the sort of language frequently used by workmen about the yard and shops. We find from the record that he did direct vile and obscene language at a superior without any provocation, and that the words were not the ordinary curse words that workmen may sometimes use. We also find that the claimant coupled the vile and obscene language with a threat, but that he committed no overt act to carry out the threat. We think the threat was more of an after thought than an immediate plan to do bodily injury. We find that the foreman was not in real danger of injury, and that he did not regard the threat seriously. However, we find the claimant guilty of both parts of Charge No. 1.

On Charge No. 2, the claimant was instructed to remove some oil spots from the floor caused by oil leaking from a part that was to be repaired. He did put some sawdust on the floor, but did not clean the floor as instructed, giving as an excuse his opinion that the oil would continue to leak until the part was completely repaired. We find that his reasons do not justify his refusal to do the work assigned. Later the same day, two foremen located the claimant in a car other than the one to which he had been assigned to do some work. The claimant testified that he was in the other car borrowing some tools from a fellow-worker. Supervisors censored him for being away from his assigned work and he responded with language and threats similar to that used in Charge No. 1; the incident of the day before. We fail to find in the record that supervision in any way provoked these vile, obscene, threatening remarks made by the claimant. They were entirely unnecessary and uncalled for. We find the claimant guilty of Charge No. 2.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of July, 1957.