

Award No. 2683
Docket No. 2569
2-PULL-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement The Pullman Company unjustly withheld Electrician I. J. Yablon from service during the period of July 16th to July 29, 1956, and assessed his record with a notation to this effect.

2. That accordingly The Pullman Company be ordered to compensate Electrician I. J. Yablon for his loss of compensation during this period.

3. That accordingly The Pullman Company be ordered to remove this notation from his service record.

EMPLOYEES' STATEMENT OF FACTS: Electrician I. J. Yablon, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the Pennsylvania Terminal District on June 10, 1952, and has been in their service ever since.

Under date of April 23, 1956, the claimant was notified to appear for a hearing at 2:00 P.M. April 29, 1956. This hearing date was postponed until May 14, 1956. The hearing was then recessed until May 24, again recessed until June 19, 1956, on which date the hearing was completed; a copy of this hearing record is submitted as shown as Exhibit A.

Under date of July 16, 1956, R. Bucherati, foreman, Pennsylvania District, notified claimant that he would be withheld from service for ten work days and his service record assessed with a notation; a copy of this decision is submitted and shown as Exhibit B.

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.)

CONCLUSION

In this ex parte the company has shown that Electrician Yablon is guilty of the charge placed against him for his actions on March 29, 1956; namely, that at 11:20 P.M. he walked off the job and left the Pennsylvania Terminal Station without permission or authority. Additionally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The claim of the organization 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.

The evidence of two assistant foremen at the investigation clearly proved the charge against the claimant and their testimony was supported by other evidence, such as the testimony of Electrician Scanlon. Minor discrepancies in their stories indicate truthfulness within the limits of human memory, not that they were fabricated to frame the claimant. There is no evidence to support the employes charge that the charge against claimant was a frame-up.

The claimant denied the charge. The resolution of such conflicting evidence is a function of the officer conducting the investigation initially. Since evidence was adduced to support his findings and there is no evidence that the carrier acted arbitrarily or capriciously, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.