

Award No. 4122

Docket No. 4000

2-PULL-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L. — C.I.O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly and unjustly discharged Electrician C. R. Fornwald from their service, without according him a fair and impartial hearing.

2. That accordingly the Carrier be ordered to restore all pertinent rights of the Claimant and compensate him for all time lost account said unjust discharge.

EMPLOYEES STATEMENT OF FACTS: Electrician C. R. Fornwald hereinafter referred to as the claimant was employed by the Pullman Company hereinafter referred to as the carrier on May 23, 1944, with continuous seniority dating therefrom.

The claimant was notified by letter dated January 23, 1961, that a hearing would be accorded him January 27, 1961. The hearing was postponed and later was held on February 23, 1961.

This dispute was handled with the carrier, up to and including the highest officer designated by the carrier to handle such cases, and in accordance with the agreement effective July 1, 1948, as subsequently amended, which is the controlling agreement in this dispute.

POSITION OF EMPLOYEES: It should be clear to all persons, who with an open mind shall read this hearing transcript the carrier did not accord the claimant a fair and impartial hearing. It was nothing but a travesty and a mock trial conducted by a moot court. With malice and showing the vindictiveness of the ones who prepared the charge in this instant case they included the entire service record of the claimant in this charge by having placed it in the record on pages one and two of the transcript.

The burden of proof rests with the carrier, yet they failed to produce

In view of the 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 Second Division Award 1924 and Third Division Awards 430, 599, 2498, 2772, 3235, 3987, 4269 and 9455.

CONCLUSION

In this ex parte submission the company has shown that on December 1, 1960, Electrician Fornwald failed properly to inspect the amplidyne on car OHIO STATE UNIVERSITY and change defective brushes. Additionally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute. Also, the company has set forth that under the Railway Labor Act a right of appeal is limited to an employe or his representative, a limitation that clearly excludes a case involving a deceased person.

The claim of the organization that the company improperly and unjustly discharged Electrician Fornwald from service on February 16, 1961, 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.

Parties to said dispute were given due notice of hearing thereon.

On December 1st the claimant and another electrician made electrical inspection of the Pullman car, a requirement of which was the removal of the amplidyne covers and inspection of its commutator, rings and brushes; they certified the car for service without notation of any amplidyne defects.

On December 5th, the day before its return to service, the amplidyne would not operate the lights, and the brushes were found worn down to the rivets, causing the commutator to be pitted and shorted.

Claimant testified that he had made the outside inspection but did not remember whether he looked at the amplidyne or not; that he looked at the generator and when the lights failed to go on, he cleaned the contacts for the amplidyne and the lights went on. He stated further that his work required going back and forth between this and other cars, and that under such conditions it would be easy to overlook something, which was obviously true and necessitated a checklist or other systematic procedure. His testimony strongly suggests that he was satisfied with turning on the lights by merely cleaning the contacts and did not make the required amplidyne examination.

This is especially true because of the amplidyne brushes' condition while the car was still in the shop just four days later. Objection is made that there was no proof that the amplidyne was not running continuously between December 1st and 5th; that "it is possible that this amplidyne was running a min-

imum of 72 hours * * *." There is no suggestion why the lights on the car might have been burning in the shops all that time, night and day, including Sunday; and the record shows that amplidynes are inspected not oftener than once a month, and can run for thousands of hours between inspections.

Under these circumstances, including claimant's inability to state that he had actually inspected the amplidyne brushes, we cannot conclude that he did inspect them, that they were then in good condition, but that they wore down to the rivets between inspections; certainly the evidence does not force that conclusion, or make it unreasonable for carrier to believe otherwise.

It is contended that the brushes introduced in evidence at the hearing were not sufficiently identified. The objection is not valid; but even without them the evidence would be ample to support the decision. Other technical objections made cannot be sustained, including the contentions that the evidence was contradictory and mostly hearsay, and that the introduction, at the start of the hearing of claimant's service record, which was mentioned in the notice of hearing, showed malice and vindictiveness, and denied claimant a fair and impartial hearing.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.