Award No. 4165
Docket No. 4149
2-PULL-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the provisions of the current agreement were violated when the Carrier unjustly charged Electrician S. B. Montrose and suspended him from service for 10 calendar days.

2. That accordingly the Carrier be ordered to clear S. B. Montrose's record of this charge.

3. That accordingly the carrier be ordered to compensate S. B. Montrose for any wage loss suffered by him during this suspension.

EMPLOYES' STATEMENT OF FACTS: Electrician S. B. Montrose, hereinafter referred to as the claimant, was employed by the Pullman Company, hereinafter referred to as the carrier, as an electrician on December 16, 1948, in the Tampa District and employed as such ever since.

Under date of April 24, 1961, the claimant was notified by Foreman W. T. Meeks of a hearing to be held on April 27, 1961, concerning the charge that claimant was absent without leave on three dates, etc. The hearing was held by Foreman W. T. Meeks on April 27, 1961.

Under date of May 10, 1961, a letter was mailed to the claimant over the signature of Foreman J. S. McMullen in behalf of Foreman W. T. Meeks, advising him that he was being suspended from service for 10 working days and that he would be notified later as to the dates of his suspension.

Under date of May 16, 1961, another letter was mailed to the claimant over the signature of Foreman McMullen, advising him that he was being suspended from service for 10 calendar days, starting with May 16, 1961.

light of the claimant's record of flagrant violations of the second sentence of Rule 30."

Rule 30 of the carmen's agreement is similar to Rule 58 of the electrician's agreement, which is concerned in the instant case.

Additionally, the Company wishes to direct the attention of the Board to Second Division Award 3874 and Third Division Award 6478 with regard to right of the company to assess discipline when employes absent themselves from work without permission. The company wishes, further, to direct the attention of the Board to the following awards of the Adjustment Board with regard to the evidence on which the Carriers found employes guilty of charges placed against them: Third Division Awards 4840, 5401, 6105, 7214, 7215, 7217, 7218, 7657, 7774, 7775, 9455 and 10071.

CONCLUSION

In this ex parte submission the company has shown that on January 26, March 22, and April 6, 1961, Electrician Montrose absented himself from his job without permission and failed to give notice of his inability to report or of his intention not to report for work.

The claim of the organization that the current agreement was violated when the company "unjustly charged Electrician S. B. Montrose and suspended him from service for 10 calendar days" is without merit and should be denied. Also, the organization's request that the company be ordered "to clear S. B. Montrose's record of this charge" is without merit and should be denied. The question of compensating Electrician Montrose for wage loss suffered by him during the period of suspension, as requested by the organization, is moot since Montrose was on furlough during the period of suspension. Accordingly, he suffered no wage loss.

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.

The Claimant, S. B. Montrose, a Carrier employe since December 16, 1948, worked as an electrician from 12 midnight to 8:00 A. M. Sunday through Thursday in the Carrier's Tampa District, Florida.

The Claimant was absent from his assignment on January 26, 1961, March 22, 1961 and April 6, 1961, and following a hearing on April 27, 1961, the Claimant received a suspension of 10 calendar days — beginning May 16, 1961.

The pertinent portions of the key rules herein involved are as follows:

"Rule 52. Discipline. No employe shall be disciplined, suspended or discharged without a fair and impartial hearing, except that a hear-

ing shall not be granted in any case involving the dismissal of an employe prior to completion of his probationary period as provided in Rule 45. An employe may, however, be withheld from service pending a hearing which shall be prompt, except that . . ."

"Rule 58. Unavoidably Kept from Work. In case an employe is unavoidably kept from work he shall not be discriminated against. An employe detained from work on account of sickness, or for other good cause shall notify his supervisor in advance or as early as possible."

The Organization contends that the Carrier failed to comply with the time-limit requirements; that the Claimant did not receive a fair hearing; that the Claimant was unavoidably kept from work; and that the Claimant complied with the requirements of Rule 58 on the three occasions when he was unavoidably kept from work.

The Carrier contends that the Claimant was absent without permission from his assignment on January 26, March 22 and April 6, 1961; and that he "failed to give notice of his inability to report or of his intention not to report for work."

The record indicates that the Carrier did not charge the claimant until he had been absent for the third time in a ten-week period. Such action indicates that the Carrier's action was not hasty but fair and in keeping with desirable personnel practices. Following the Claimant's third absence the Carrier took "prompt" action. Accordingly, the time-limit charge, based on the word "prompt" (in Rule 52), is not sustained by the record.

A critical and objective review of the Hearing Transcript failed to sustain the Organization's contention that the Claimant did not receive a fair hearing.

Next we turn to the Organization's assertion that the Claimant was unavoidably kept from work. Here again we could find no support for the Organization's position. Even under the most generous interpretation possible of the word "unavoidable", the Claimant's excuses — namely —

"My alarm clock stopped and I slept the night through, awaking after 9:30 A. M. . . ."

NOTE: The above statement refers to Claimant's absence on January 26th.

"On March 22nd the alarm did not go off — slept the night through, still did not awake until about 9:30 or 10:00 A. M. . . ."

"April 6th I failed to pull the alarm when I retired . . ."

— could not be considered "unavoidable".

That portion of Rule 58 which reads:

"An employe detained from work on account of sickness, or for any other good cause . . ."

also fails to support the Claimant's position, because neither the alarm clock's nor the Claimant's failures could be placed in the "good cause" category stated in the above rule.

Accordingly, the Board must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.