



Award No. 5690

Docket No. 5512

2-Pull-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O.
(CARMEN)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Pullman Company unjustly and unfairly suspended carman Allan B. Harris ten days from work causing him to lose approximately \$240.00 in earnings.
2. That accordingly, the Pullman Company be ordered to compensate additionally carman Mr. Allan B. Harris in the amount of ten days, 8 hours per day, or a total of approximately \$240.00, account the unjust action of the carrier in violating the provisions of the agreement.

EMPLOYES' STATEMENT OF FACTS: The Pullman Company, hereinafter referred to as the Carrier, employs carman Mr. A. B. Harris, hereinafter referred to as the claimant, in their agency at Chicago, Illinois.

It is the habit of the claimant to come to work early in the morning, for the purpose of being on time and having a cup of coffee. On November 8, 1966, the claimant, as was his usual practice for many years, came to work at about 7:00 A.M. approximately one hour before he was scheduled to report to work at 8:00 A.M. At approximately 7:02 A.M. the foreman approached the claimant and requested him to work. The claimant punched his time card at 7:02 A.M. and at that time advised the foreman that under the provisions of the agreement, he would be entitled to be paid two hours and forty minutes as the punitive rate. The foreman then said, "just a minute, I will double check to see if the regular man is coming in."

He then left the claimant standing, waiting, ready to be assigned to work. The claimant waited for almost twenty (20) minutes before the foreman returned. The foreman then requested him to go to work but told the claimant that inasmuch as it was now 7:20 A.M. that he was no longer entitled to be paid for 2 hours and 40 minutes at the punitive rate but would only be entitled to be paid on the minute to minute basis. The claimant, inasmuch as he had only been requested to work,

the Agreement, when he refused to follow instructions of Foreman Moore to perform overtime work immediately preceding and continuous with his regular bulletined hours on November 8, 1966. Further, it is shown herein that under Rule 5(c) of the Agreement, Harris properly was entitled to 40 minutes pay at time and one-half rate for the overtime work he was requested to perform. Additionally, the Company has shown that Carman Harris testified in the hearing that he did not perform the overtime work in question. Also, the Company has shown that the Organization in its claim to the Board does not request any rescinding of the ten (10) days assessed upon Carman Harris, but asks that he be compensated in the amount of approximately \$240.00 representing lost earnings. Finally, it is proved herein that Management's action in assessing discipline upon Carman Harris is confirmed as correct by awards of the Second Division and of other Divisions of the Adjustment Board; and that, further, the action taken with Carman Harris was not unjust treatment of the employee.

The Organization's claim in behalf of Carman Harris is without merit and should be denied by the Second Division.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

This is a discipline case. Carman Allan B. Harris, Claimant, assigned hours 8:00 A.M. to 4:30 P.M., Illinois Central Yards, Chicago, Illinois, was suspended from service for ten (10) days that presumably would have been worked by him, commencing December 22, 1966 and terminating January 4, 1967, after a formal investigation on December 6, 1966, pursuant to due notice to answer to the precise charge that he had refused to follow the instructions of Foreman F. E. Moore to perform overtime work immediately preceding and continuous with his regularly bulletined hours on November 8, 1966.

A stenographic report was taken at the hearing. The transcript is a matter of record before the Board and has been duly examined.

Claimant speaks:¹

"Mr. Dodds: Well, Mr. Harris, when Mr. Moore told you to go to work, whether it was at 7:02 or at 7:20, why didn't you go to work?"

Carman Harris: Usually when I get down I have my breakfast, so I go in and have something to eat. I think, if that's my time,

¹ Transcript, page 8.

I can do that. I don't think I have to jump to go out to help him if he doesn't want to pay me my proper rate.

Mr. Dodds: Well let me inform you about something, Mr. Harris. When you work for a company, you are subject to your supervisor. If you think that you are not being paid properly, that is a matter you can take up with your Organization, but you are being paid by the Pullman Company to perform your duties under the supervision and instructions of your supervisor, and the Company expects you to follow his instructions.

Carman Harris: That may be true, but I am not a little boy.

Mr. Dodds: I agree with you on that—you are not a little boy, and you should know that, when you work for any company, not only The Pullman Company, you are being paid by that company to perform certain work, and you do your job under the instructions of your supervisor. Is that clear?

Carman Harris: That's very clear.

Mr. Dodds: Did you ever agree with your supervisor on how you would get paid?

Carman Harris: There was no agreement. If I didn't get paid, I wasn't intending to work.

Mr. Dodds: You didn't intend to work?

Carman Harris: I didn't, and I didn't.

Mr. Dodds: That is what I am driving at. Mr. Moore told you to go to work. Why didn't you do it. You didn't intend to, is that right?

Carman Harris: That's right.

Mr. Dodds: That's your attitude? And that was your attitude at that time?

Carman Harris: I didn't go to work.

Mr. Dodds: I have no further questions."

The instant Board is not inclined toward preachment or philosophy; but, at times, the temptation is greater than at others when, as here, there are lessons to be taught.

Lexicographers define discipline as exercise designed to train proper conduct or action. Discipline was exercised properly in this case. Hopefully a lesson has been learned.

A W A R D

Claim (1) denied;

Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1969.