



Award No. 5723

Docket No. 5577

2-Pull-CM '69

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES

1. That the Pullman Company violated the current working agreement when they deliberately and arbitrarily suspended Mr. H. Stewart for five (5) working days commencing February 9, 1967.
2. That accordingly the Pullman Company be ordered to compensate Mr. H. Stewart for eight (8) hours per day at the straight rate for February 9, 10, 11, 12 and 15, 1967 account the violation.

EMPLOYEES' STATEMENT OF FACTS: On Christmas Eve, December 24, 1966, Mr. H. Stewart, hereinafter referred to as the claimant reported for work at approximately 11:55 P.M., as he was due to work 12:00 Midnight to 8:00 A.M. at the Pullman Company, hereinafter referred to as the Carrier, at Sunnyside Yards, Long Island City, New York.

The claimant's duty is to service Pullman sleeping cars arriving and departing and going through that point.

The claimant came into the office for his assignment and exclaimed, "Merry Christmans"! The foreman, Mr. S. Witkewicz, immediately took offense and told the claimant that he was "under the influence of some intoxicant" and advised him that he was in no condition to work and instructed him to go home.

The claimant protested that he was not intoxicated, that he had traveled many miles on this, one of the stormiest and snowiest nights in New York's history, and that he was there to work his assignment.

The foreman became angry and called up Mr. G. Zullo, Assistant Superintendent, and told him that the claimant was under the influence of intoxicants. The Assistant Superintendent asked to speak to the claimant, which he did and told the claimant to go home. The claimant left and because of the miserable night outside, stopped for a cup of coffee in the restaurant. The foreman followed him into the restaurant harassing him to

supervisor. Further, it is shown in this submission that the awards of the National Railroad Adjustment Board support Management in the action taken with Carman Stewart. Finally, it is proved herein that Carman Stewart was not unjustly treated in the action taken with him by Management.

The Organization's claim in behalf of Carman Stewart is without merit and the Board should deny the claim presented to it in this case.

(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 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 waived right of appearance at hearing thereon.

The Claimant in this dispute was charged with reporting for work under the influence of intoxicant; refusing to leave the premises when instructed to do so by the Assistant Foreman; interfering with the Assistant Foreman in the performance of his duties; and making threatening and obscene remarks to the Assistant Foreman. The record discloses that Claimant's alleged misconduct as aforesaid took place around Midnight, December 25, 1966. A hearing was held on Carrier's Property January 19, 1967, which resulted in five (5) days suspension for Claimant. At this hearing, the Assistant Foreman, who lodged the complaint, testified to facts that would support the charges against this Claimant. Claimant then gave testimony which had the effect of vigorously refuting the charges. Neither of the witnesses brought forth corroborating evidence or testimony, although it could be inferred that such testimony could have been available. Therefore, this dispute is confined to one man's word (the Assistant Foreman) against another (Claimant).

There is nothing in the record that indicates the hearing was handled in an unfair manner; or that Carrier acted in bad faith; or that the testimony of the Assistant Foreman was prompted by an improper motive.

This Board will follow Award 4981 (Weston) which holds, "* * * It is not this Board's function to resolve conflicts in testimony and we will not disturb discipline case finds that are supported by credible, though controverted, evidence."

This Board further finds that five (5) days suspension based upon charges of this nature is certainly not unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1969.