Award No. 1509
Docket No. 1425
2-PULL-EW-'52

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That Electrician B. McCall, was unjustly deprived of his service rights from December 4, 1950 to December 11, 1950, inclusive, under the current agreement and that accordingly The Pullman Company be ordered to compensate him for all time lost during aforesaid period.

EMPLOYES' STATEMENT OF FACTS: Electrician B. McCall, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the St. Louis shops at St. Louis, Missouri on July 6, 1943, and was regularly assigned as an electrician from 7:45 A. M. to 4:30 P. M. daily except Saturdays and Sundays at the time he was suspended from service during the above mentioned period.

Under date of October 31, 1950, the claimant was notified to appear for a hearing at 9:30 A. M. November 7, 1950. A copy of said notification is included in the copy of the hearing record which is submitted herewith and identified as Exhibit A.

Hearing was conducted on November 7, 1950 by P. A. Wagner, manager, St. Louis shops, and a copy of the hearing record is hereby submitted and identified as Exhibit A.

On November 29, 1950, P. A. Wagner, manager, St. Louis shops, notified the claimant that he was suspended from service commencing Monday, December 4, 1950, until Monday, December 11, 1950, and a copy of the mentioned notification is herewith submitted and identified as Exhibit B.

This dispute has been handled in accordance with the provisions of the current agreement, effective July 1, 1948, with the highest designated officer to whom such matters are subject to appeal, with the result that this officer declined to adjust this dispute.

POSITION OF EMPLOYES: It is submitted that when the charge against the claimant, as following, is considered:

In the hearing held on November 7, 1950, McCall did not deny that he was in the battery department "washing up" at 4:15 P.M., fifteen minutes before the close of his tour of duty, and that Mr. Wagner had previously observed him washing up prior to quitting time. He claimed, however, that in this instance he was not washing his face but was merely removing "acid" from his hands. At this point it should be noted that when Foreman Kopecky, whose statement appears on page 2 of Exhibit A, spoke to McCall on the Monday following the incident of Friday, October 20, McCall did not excuse his action by claiming that he had acid on his hands, but merely stated that he had placed a charging receptacle in the sly sandblast booth. Further, in the hearing accorded McCall on November 7, 1950, Assistant Manager N. Stienmetz stated that the battery from which McCall allegedly got acid on his hands was a charging receptacle upon which there would be no acid. Additionally, see testimony of Mr. Wagner on this point.

In connection with that part of the charge which states that McCall was insolent to, and profane toward, a supervisor when he directed McCall's attention to his dereliction in washing up prior to the completion of his tour of duty, the company wishes to call the attention of the Board to the statement of Mr. Law, dated October 23, 1950, previously referred to, setting forth the improper language used by McCall when Mr. Law informed him that he could not wash up in the battery department. Somewhat significantly, McCall does not deny that he used the language in question. His excuse for employing such language; namely, that Mr. Law said he was "too damn smart," is clearly inadequate. Management cannot permit employes to use language which is clearly alien to business procedures. As pointed out by management's representative in the hearing accorded McCall, cursing among employes of The Pullman Company is strictly prohibited, which prohibition applies to the use of obscene or profane language.

Unquestionably, there has been no abuse of discretion in the action taken by the company with Electrician McCall nor was that action arbitrary, unreasonable or unjust. This Board has repeatedly held that where the carrier has not acted arbitrarily, without just cause, or unreasonably, the judgment of the Board in discipline cases would not be substituted for that of the carrier.

Under Findings, in Award 1389, identified as Docket No. 1312, this Board ruled as follows:

> "The primary question presented for decision is whether or not such action of the carrier was arbitrary, unreasonable or unjust. Being a discipline case, it is elementary that the Division cannot substitute its judgment for that of the carrier unless it was so tainted with one or more of such three elements of injustice." (Cf. Awards 1402, 1427, 1428 and 1435.)

CONCLUSION

The company submits that McCall's actions on the date in question were improper and warranted disciplinary action. The assessment of the five-day suspension upon him for his misconduct was just and reasonable. The claim 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 facts of record do not make it appear the carrier's action in assessing the discipline herein involved was either arbitrary, capricious, or unreasonable. Under such circumstances there is no sound ground for sustaining the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1952.