**Award No. 1544**
**Docket No. 1435**
**2-Pull.-CM-'52**

# NATIONAL RAILROAD ADJUSTMENT BOARD
## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.**

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## PARTIES TO DISPUTE:

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

## THE PULLMAN COMPANY

**DISPUTE: CLAIM OF EMPLOYES:** (1) That Upholsterer L. L. Rufus was unjustly suspended from service on November 10, 1950, and that his more than 20 years of service rights were unjustly terminated on January 18, 1951.

(2) That accordingly, the carrier be ordered to reinstate this employe with all service rights with pay for all time lost.

**EMPLOYES' STATEMENT OF FACTS:** L. L. Rufus, hereinafter referred to as the claimant, was employed at the carrier's Atlanta, Georgia shop as helper apprentice August 18, 1927, completed his apprenticeship and held continuous service rights as an upholsterer until January 18, 1951. During claimant's years of service with this carrier, he also served as the local representative of the Pullman Car Employes Association of the repair shops at Atlanta, Georgia.

Subsequent to certification by the National Mediation Board on August 5, 1948 for representation purposes under the Railway Labor Act, as amended, claimant became the duly authorized representative of the organization of Brotherhood Railway Carmen of America at Atlanta, Georgia and has continued as such in addition to serving as chairman of the Atlanta shop crafts local federation.

At or about 8:30 A.M. November 10, 1950, claimant, in compliance with the carrier's requirement for accounting purposes, made notation on a pad provided for such, that he was, beginning at that hour, away from his tour of duty attending to matters concerning both the organization and the carrier. The specific matter for which claimant made said notation was with regard to supplying additional upholsterers which was discussed between claimant and manager of the Atlanta shop, Mr. D. M. Cohee the day before, and the application of a painter for employment.

Upon arrival at the dispensary where he had arranged to meet Committeeman Taylor who was to accompany him in meeting with Manager Cohee, claimant found Machinist Helper D. A. Childers being interrogated regarding an injury he had sustained. In his capacity as chairman of the local shop crafts' organization and in accordance with Mr. C. W. Pflager's letter of October 29, 1945, copy of which is submitted herewith and identified as Exhibit "A", claimant insisted that he represent Childers for the pur-

ently before us. The record is adequate to support the penalty assessed." (See also Second Division Awards 993, 1041, 1109, 1157, and Third Division Awards 3112, 3125, 3149; and Fourth Division Award 257.)

**CONCLUSION**

The company has shown in this ex parte submission that L. L. Rufus interfered with the routine investigation of an injury being conducted by Atlanta shop supervisors, was defiant of authority, and committed an assault upon the shop manager on November 10, 1950, in the Atlanta shop dispensary. There can be no question on the basis of the evidence contained in the record of this case that Rufus is guilty as charged.

In arriving at the degree of discipline the management properly gave consideration to a previous incident of a similar nature appearing upon the employe's service record. The National Railroad Adjustment Board has repeatedly held that where the carrier has not acted arbitrarily without just cause or in bad faith, the judgment of the Board in discipline cases would not be substituted for that of the carrier. In Third Division Award 2769, Docket Number PM-2677, the Board stated under **OPINION OF BOARD**, as follows:

> ". . . In its consideration of claims involving discipline, this Division of the National Railroad Adjustment Board (1) where there is positive evidence of probative force will not weigh such evidence or resolve conflicts therein, (2) when there is real substantial evidence to sustain charges the findings based thereon will not be disturbed; (3) if the Carrier has not acted arbitrarily, without just cause, or in bad faith its action will not be set aside; and (4) unless prejudice or bias is disclosed by facts or circumstances of record it will not substitute its judgment for that of the Carrier."

There has been no abuse of discretion in the action taken by the company with Rufus for his improper conduct on November 10, 1950, nor was the action capricious, unreasonable, or unjust. The company submits that its action in discharging Rufus was fully justified by the facts of record.

The claim in behalf of Rufus 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 carmen of System Federation No. 122 contend the company unjustly suspended Upholsterer L. L. Rufus from service on November 10, 1950 and unjustly terminated his services with it on January 18, 1951.

Rule 64 of the parties effective agreement provides the company may withhold an employe from service during investigation. Therefore the company did not go beyond its rights in doing so and Rufus was not unjustly suspended on November 10, 1950.

The charges made against Rufus were that "On November 10, 1950, you interfered with a routine investigation of an alleged injury being conducted by Atlanta Shop supervisors, were defiant of authority when you repeatedly refused to comply with my (Manager D. M. Cohee) instructions to return

to your work in the shop and committed an assault upon me (Manager D. M. Cohee) when I attempted to lead you out of the dispensary." (insertions ours)

A hearing was held on these charges and by letter dated January 18, 1951, Rufus was notified that the evidence adduced at this hearing fully substantiated the charges which had been made against him and in view thereof he was discharged from the service of the company.

Certain principles are here applicable. First; regardless of what rights the collective bargaining agreement may give an individual employe coming under it (he still owes obedience to the orders of his superiors when on duty as an employe.) He is not then at liberty to assert these rights either for himself or other employes but must comply with the orders given him. His failure to do so will make him subject to discipline. If, in obeying such orders, any rights which he has under the agreement are violated his redress lies through the channels which the agreement provides for his protection and, in this respect, an individual employe does not waive any of his rights by complying with the orders given.

Second; however, when an employe is acting in a representative capacity for the organization or any unit thereof, or as a member thereof, in a meeting or forum agreed to and arranged for the purpose of considering matters relating to the subject of their agreement he is then relieved of this duty and can express himself without restriction on the subject matter being considered. Under such circumstances both parties stand on an equal footing, that is, management for the company and representatives and members for the organization and its members. However, both should always endeavor to keep within proper limits.

The incident of November 10, 1950 arose in connection with Machinist Helper D. A. Childers reporting to the company's dispensary in regard to an alleged back injury which he claimed he had suffered the day before. The factual situation did not bring it within the scope of C. W. Pflager's letter of October 29, 1945. Consequently Rufus had no authority as the shop chairman by reason thereof.

Rufus entered the company dispensary on the morning of November 10, 1950 looking for Claude P. Taylor, Jr., a fellow employe and a committeeman. Rufus was at that time away from his duties to attend to union business on the company's property, having made a notation to that effect on a tab provided for that purpose. However, he was still on company time. He was looking for Taylor so they could attend to some union matters, which included arranging a meeting with Manager D. M. Cohee. However, no prearranged meeting with Cohee had been scheduled.

After Rufus entered the dispensary he momentarily discussed with E. N. Geiger, Assistant Manager, the application of a painter who was seeking employment but that conversation had been concluded before Manager Cohee entered. After Cohee entered the dispensary Rufus became aware of Childers being present. Childers had not asked Rufus to represent him and when Rufus asked him if he wanted representation Childers told Rufus he didn't think it was necessary. Consequently Rufus did not represent Childers nor was he there on any other union matter. His status became the same as that of any other employe.

The evidence adduced as to what happened in the dispensary thereafter fully supports the company's finding that Rufus was guilty of the charges made against him. The question then arises as to whether or not the discipline imposed was, under all the circumstances, including claimant's twenty-three years of service, unreasonable. In this respect the company could take into consideration claimant's record during his years of service, including the incident of October 19, 1948. See Awards 1261 and 1367 of this Division. In view of the serious nature of claimant's conduct and his previous actions of a similar nature we find the company was justified in taking the action that it did.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June, 1952.