

Award No. 1548

Docket No. 1446

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.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That painters helper Abdul Lateef was unjustly discharged from service on February 12, 1951, that his more than 14 years of service rights were unjustly terminated on February 12, 1951.

2—That accordingly the Carrier be ordered to reinstate this employee with all service rights with pay for all time lost.

EMPLOYES' STATEMENT OF FACTS: Painters helper Abdul Lateef, hereinafter referred to as the claimant, was employed at the carrier's Calumet, Illinois shops on March 27, 1936, and held continuous service rights as such until February 12, 1951. During claimant's years of service with this carrier he also served as a paint department steward of the local organization of the Brotherhood Railway Carmen of America, at the repair shop at Calumet, Illinois.

On November 24, 1950, claimant in compliance with his duties as a paint department helper in the spray booth, performed his tour of duty. As is customary, on Friday of each week before quitting time, Helper Lateef helped to remove and clear the paper from the spray booth, carried out the horses on which materials are laid for spraying and carried out the cleanings that were removed from the spray booth. He then went to the bathroom.

Upon his return from the bathroom, Helper Lateef was met by paint department Leader Lenart and questioned as to why the paper was not carried out. Claimant Lateef in replying to the remarks of Leader Lenart that he, Lateef, did not clear out the paper from the spray booth, replied that he, Lateef, already did pick up and clear out the paper and had the spray booth to which he was assigned as a helper cleared out. Following the discussion with Leader Lenart, Claimant Lateef discovered that there was some paper lying in another spray booth, other than the spray booth to which he, Lateef, was assigned to, which paper he then picked up and carried away.

Under date of December 28, 1950, claimant was advised by letter sent to him in care of the paint department of The Pullman Company at Calumet shops, to be ready and to appear for hearing at 11:00 A. M., January 3, 1951,

management properly gave consideration to previous incidents of a similar nature appearing upon the employee'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 No. 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 Lateef for his improper conduct and actions on November 24, 1950, nor was the action capricious, unreasonable, or unjust. The company submits that its action in discharging Lateef was fully justified by the facts of record.

The claim in behalf of Lateef 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 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.

The parties to said dispute were given due notice of hearing thereon.

The carmen of System Federation No. 122 contend the company unjustly discharged Painter Helper Abdul Lateef on February 12, 1951. Lateef's discharge resulted from the company finding him guilty, after a hearing, of the following charges: "that on November 24, 1950; you refused to comply promptly with instructions given you by your supervisor, became abusive and threatened him with physical injury."

Claimant, under the circumstances disclosed by the record, was required to obey the orders of his superior. He was not at liberty to decide what work his position involved nor to refuse to perform work when directed to do so. Any failure on his part to meet these requirements would make him subject to being disciplined. If any of his rights were transgressed by reason of his obeying the orders given, his relief therefrom was by the method which the parties' affective agreement provides for that purpose.

There was evidence adduced at the hearing which supports the company's finding of guilt and, in view thereof, the company was not capricious, arbitrary or unjust in making its decision.

The record discloses that claimant not only refused to perform the work, when his superior directed him to do it, but was very abusive and threatened physical injury in doing so. In view of these facts and claimant's past record, which it was proper for the company to consider when it imposed discipline, we do not find the penalty imposed to be unreasonable. See Awards 1261 and 1367 of this Division.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1952.