

Award No. 1687

Docket No. 1568

2-PULL-EW-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Electrician G. L. McKinley was unjustly dealt with when the Carrier withheld him from service from April 1, through April 25, 1952.

2. That accordingly the Carrier be ordered to compensate him for the wage loss suffered by him during the period of April 1 through April 25, 1952.

EMPLOYEES' STATEMENT OF FACTS: Electrician G. L. McKinley hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the Pittsburgh district on June 16, 1935 and has been in the service of The Pullman Company since November 1, 1922.

Under date of April 3, 1952, the claimant was notified to appear for a hearing at 10:00 A.M. April 7, 1952. A copy of said notification is hereby submitted and identified as Exhibit A.

Hearing was conducted on April 7, 1952 by A. Small, foreman, Pittsburgh district, and a copy of the hearing record is hereby submitted and identified as Exhibit B.

On April 25, 1952, A. Small, foreman, Pittsburgh district, notified the claimant that he would be withheld from service during the period of April 1 through April 25, 1952, and a copy of the mentioned notification is hereby submitted and identified as Exhibit C.

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 EMPLOYEES: It is submitted that when the charge against the claimant, as following, is considered:

“You threatened Assistant Superintendent J. R. Hickson with physical violence.”

in conjunction with the hearing record it is obvious that the record, if read from a fair and impartial view point, does not disclose evidence that would

he should be paid for all time lost, is without merit. McKinley's improper conduct on March 31 clearly warranted disciplinary action. The company properly imposed a 25-day suspension from service upon him.

Unquestionably there has been no abuse of discretion in the action taken by the company with Electrician McKinley 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 in the records of the Second Division as Docket No. 1312, this Board ruled as follows:

"The primary question presented for decision in 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 injuries." (Cf. Awards 1402, 1425, 1427, 1428, 1435, 1509.)

Also see Third Division Awards 419, 431, 1022, 2297, 2632, 3125, 3235, 4226, 4229, 4269.

There has been no abuse of discretion in the action taken by the company with Electrician McKinley nor was that action unjust, unreasonable, or based upon charges unproved. The claim that McKinley should be compensated for the wage loss suffered by him during the period April 1-25, 1952, which period represents his 25 days' suspension from service, is without merit.

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.

Claimant, G. L. McKinley, was charged with threatening Assistant Superintendent J. R. Hickson with physical violence. After an investigation, he was found guilty and suspended from service for twenty-five days. He asserts that this constituted unjust treatment under the evidence and asks that carrier be ordered to compensate him for the 25-day period.

Claimant was employed as an electrician since June 16, 1935 and has been in service of the carrier since November 1, 1922. On March 31, 1952, he sought out Assistant Superintendent Hickson and upbraided him for, "telling people I had this other Union write up that claim about the filter room." Hickson says that he started to walk away from him stating: "You can do anything you like." He further stated: "He (claimant) kept following and crowding against me as I walked into the Shop proper, shouting, 'I'm going to make you prove it.'" According to Hickson, Claimant then said: "I'll punch your mouth in," and "I'll take you down the street and punch your nose in," and "I'll not get you on the job, but I'll take you down on the street and punch your mouth in." Carman Rzemieniewski says: "I heard McKinley say, 'I'll take you out and punch you in the nose'—it was 11:50 in the shop when I heard it." Mechanic Albert Swiader heard Hickson say to McKinley: "You will not punch me in the mouth. I will have you taken off the job."

Claimant denies that he threatened physical violence in any form. Others at or near the scene of the alleged altercation state that they heard no threats of violence. The statements made by Hickson are supported by the positive evidence of Rzemieniewski and Swiader. The denials of McKinley are supported only by the negative evidence of two or three other employees. The evidence was in direct conflict. We have said many times that where there is evidence, which if believed, supports the charge, this Board will not interfere with the assessment of discipline. We point out that McKinley started the altercation. His threats of violence were heard by two other employees. Although in conflict, the evidence is sufficient to support carrier's decision.

Carrier assessed a penalty in the form of a 25-day suspension from service. The long service of claimant to the carrier was considered. The discipline imposed was not excessive.

There is considerable evidence in the record which is directed at the methods employed by Assistant Superintendent Hickson in his dealings with the employes he supervises. This is a matter which is not before the National Railroad Adjustment Board in the present dispute. If claimant has a grievance against Hickson, the agreement and processes of the Railway Labor Act provide the remedy. The efficient operation of the railroad industry requires that responsibility be fixed and the instructions of superiors be followed. While it is to be hoped that supervisors and subordinates maintain a mutual respect for each other, we know that this is not always the case. But the remedy by either is not to undertake to settle differences by force or threats of force. To countenance such conduct would bring about an intolerable situation. The Railway Labor Act and the collective agreement entered into pursuant thereto, provide an orderly method of settling such disputes. The agreement should be adhered to in this type of dispute the same as in any other.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1953.