

Award No. 1769

Docket No. 1673

2-PULL-EW-'54

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 EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, Electrician H. Staib, considers that he was unjustly treated when his record card was assessed with a warning.

2. That accordingly the Carrier be ordered to remove the notation from his record card.

EMPLOYES' STATEMENT OF FACTS: Electrician H. Staib, herein-after referred to as the claimant, was employed by the Pullman Company as an electrician at the New York District on February 17, 1943 and has been in their service ever since.

Under date of December 1, 1952, the claimant was notified to appear for a hearing at 10:30 A.M. December 5, 1952. A copy of said notification appears in the hearing record, Pages 1 and 2, identified as Exhibit A.

A postponement of the hearing was requested by the employes and granted by the carrier setting a new date for hearing on December 29, 1952. Copies of correspondence dealing with the postponement appear in the hearing record identified as Exhibit A.

Hearing was conducted on December 29, 1952 by A. Nee, foreman, New York District. A copy of the hearing record is submitted herewith and identified as Exhibit A.

On January 26, 1953, A. Nee, foreman, New York District, notified the claimant that his record would be assessed with a warning. A copy of this notification is hereby submitted and identified as Exhibit B.

On February 13, 1953 we appealed this decision of Mr. A. Nee. A copy of this appeal is hereby submitted and identified as Exhibit C.

On March 5, 1953 Mr. Dodds, appeals officer, The Pullman Company, denied this appeal. A copy of this denial is hereby submitted and identified as Exhibit D.

CONCLUSION

In this ex parte submission, the company has shown that Electrician Staib was assigned on November 5 to inspect the under-frame equipment of car HENRY HUDSON BRIDGE, which inspection included the checking of the driven unit safety bracket. Also, the company has shown that the condition of the car when it was examined in the Root Street Yards, Chicago, established that bolts had been missing from the safety bracket for a period of time dating from November 5. Further, the company has shown that the safety bracket was not knocked off car HENRY HUDSON BRIDGE by any foreign obstacle on the right-of-way. Electrician Staib's careless performance of his duties on November 5, 1952, warranted disciplinary action. The company properly assessed him with a "Warning."

Unquestionably there has been no abuse of discretion in the action taken by the company with Electrician Staib, 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 submitted 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 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, 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 Staib nor was that action arbitrary, unreasonable or unjust. The organization's claim that Staib was unjustly treated and that the "Warning" should be removed from his record 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.

This case is similar to but not identical with that of the claimant in Award 1767 (1679). The record shows that Electrician H. Staib gave car HENRY HUDSON BRIDGE a "D" inspection on November 5, 1952, at Mott Haven Yard on the New York Central Railroad. He states that he made a through inspection of the safety bracket which fell off on November 11, 1952. He states there was nothing loose under the car and that all the bolts, including the cap screws, were in place.

The evidence is that this car travelled 975 miles at high speed before the safety bracket came off. The safety bracket was lost at least six days after Electrician Staib made his "D" inspection. We think the incident occurring between South Bend and Elkhart was too remote as to time and

place, under the circumstances of this case, to warrant the imposing of discipline upon this claimant. The carrier seems to have recognized this fact when it assessed only a warning. We do not think that Electrician Staib was subject to discipline under the evidence. Discipline must be based upon something more than a mere suspicion or possibility that an employe failed in his duties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1954.