

Award No. 1786

Docket No. 1635

2-PULL-CM-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Painter P. Fried was unjustly suspended from service effective August 15, 1952 for a period of fifteen (15) days.

2. That accordingly the Carrier be ordered to compensate him for all said lost time and clear his service record of the aforementioned unjust discipline.

EMPLOYEES' STATEMENT OF FACTS: Paul Fried, hereinafter referred to as the claimant, has been regularly employed by the carrier at the Ranken Avenue Yards, St. Louis, Missouri, as a painter since September 3, 1943, regular assigned hours 9:00 A.M. to 5:00 P.M., Monday through Friday with Saturday and Sunday as rest days. Under date of June 16, 1952, the claimant was advised by registered mail to appear for a hearing at 1:00 P.M., C.S.T., June 20, 1952, on the charge that while on duty as a painter in the Ranken Yards, St. Louis, Missouri, on April 29 and May 1, 1952; failed properly to perform work as a painter, failed properly to record on car record card, work performed, which is affirmed by Foreman F. J. Hellweg's letter of June 16, 1952, a copy of which is submitted herewith and identified as Exhibit A. Foreman F. J. Hellweg failed to furnish the carmen local chairman a copy of the letter of charges dated June 16, 1952, addressed to claimant, until June 20, 1952, a copy of which is submitted herewith and identified as Exhibit B.

Hearing was called as scheduled on June 20, 1952, and upon the request of the carmen local chairman, the hearing was recessed until 1:00 P.M., July 18, 1952, then mutually agreed to reconvene on July 21, 1952, again mutually agreed to reschedule the hearing for July 25, 1952. Copy of said hearing dates changed is included in the copy of the hearing record which is submitted herewith and identified as Exhibit C.

Hearing was held on July 25, 1952, by Foreman F. J. Hellweg and a copy of the hearing record is herewith submitted and identified as Exhibit C.

not presently before us. The record is adequate to support the penalty assessed." (See also Second Division Awards 993, 1041, 1109, 1157, 1253, and Third Division Awards 3112, 3125, 3149, and Fourth Division Award 257.)

CONCLUSION

The company has shown in this ex parte submission that Painter Fried failed properly to perform his duties on April 29 and May 1, 1952. His failures in connection with the painting of car EAGLE WATCH on the dates in question were observed and reported by three supervisors, Foreman Hellweg, Assistant Foreman Hatina, and Head Painter Westermayer. There can be no question, on the basis of the evidence contained in the record of this case, that Fried is guilty as charged. In arriving at the degree of discipline to be imposed, management properly gave consideration to two previous incidents of a similar nature appearing on the employe's service record. The company properly imposed a 15-day suspension from service upon Painter Fried for his malperformance on April 29 and May 1, 1952.

The claim in behalf of Painter Fried is without merit and 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 waived right of appearance at hearing thereon.

Carmen of System Federation No. 122 make this claim in behalf of Painter Paul Fried. They contend the Pullman Company unjustly suspended him from its service for a period of fifteen work days commencing August 15, 1952. Because thereof they ask that the Company be ordered to clear his service record of this charge and compensate him for all time lost by reason thereof.

Claimant was regularly employed at Ranken Avenue Yards, St. Louis, Missouri. On June 16, 1952 the Company, by F. J. Hellweg, foreman, charged claimant as follows:

"You failed to perform your work as a painter over and next to equipment locker and in Rooms A, B, C and D, car Eagle Watch; and further,

You failed properly to record on car record card in car Eagle Watch the work you performed in this car.

Hearing was had on these charges on July 25, 1952. The officer in charge of the hearing found the evidence adduced thereat fully substantiated the charges made. Based thereon, and considering claimant's past record, he suspended claimant for fifteen work days to commence on August 15, 1952. It is contended the Company failed to prove claimant guilty of the charges it had made against him.

The evidence adduced at the hearing, including that of Foreman F. J. Hellweg, Assistant Foreman J. Hatina and Head Painter A. J. Westermayer, support the charges made against claimant in regard to the performance of his duties on April 29 and May 1, 1952 while painting in car Eagle Watch.

We cannot, in view thereof, say such finding of guilt is without support in the evidence adduced at the hearing and therefore arbitrary and capricious. We think there is substantial proof to support the finding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.