

**Award No. 2098**

**Docket No. 1921**

**2-PULL-CM-'56**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee David R. Douglass 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 under the current agreement, the carrier unjustly dismissed Car Cleaner Charles Thornton from the service on August 17, 1954.

(2) That accordingly the carrier be ordered to restore him to service, with seniority rights unimpaired and compensated for all time lost retroactive to the aforementioned date.

**EMPLOYES' STATEMENT OF FACTS:** Car Cleaner Charles Thornton, hereinafter referred to as the claimant, was continually employed by The Pullman Company, hereinafter referred to as the carrier, at the Southern Pacific Yards, Oakland, California, since Feb. 26, 1945; when his employment relations of nearly ten (10) years were terminated.

The carriers foreman, W. J. Welch, summoned the claimant to appear for a hearing on July 29, 1954, at 12:00 P. M. on the alleged charge that he removed a camera from car SP-9153 on July 3, and that contrary to instructions, retained the camera in his possession until he attempted to sell it on July 14, 1954, and which is affirmed by the letter dated July 27, 1954, copy of which is submitted herewith, and identified as Exhibit A.

The hearing was held as scheduled and a copy of the transcript of such hearing is submitted herewith and identified as Exhibit B.

The carriers foreman, W. J. Welch, made the election to discharge the claimant effective August 17, 1954, which is affirmed by the letter dated August 17, 1954, copy of which is submitted herewith, and identified as Exhibit C.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

stituted for that of the carrier. In Second Division Award 1323, Docket No. 1256, the Board stated:

"\* \* \* it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (See also Second Division Awards 993, 1041, 1109, 1157, 1253, Third Division Awards 419, 431, 1022, 2297, 2632, 2769, 3112, 3125, 3149, 3235, 3984, 3985, 3986, 5011, 5032, 5881, 5974, 6103, 6108 and Fourth Division Award 257.)

The company submits that the dismissal of Car Cleaner Thornton from service on August 17, 1954, was justified. The organization's request that the carrier be ordered to restore him to service with seniority rights unimpaired and compensate him for all time lost 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 this dispute were given due notice of hearing thereon.

The facts of record indicate that the carrier did not act capriciously, arbitrarily, nor in bad faith when it concluded that the claimant was guilty as charged. The record of the investigation contains testimony which justified the carrier in its conclusion.

Considering the gravity of the offense, we are of the opinion that modification of the amount of discipline would not be proper in this case.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1956.