

Award No. 2579
Docket No. 2353
2-PULL-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement The Pullman Company improperly suspended from service Car Cleaner N. Cloudy pending a hearing and subsequent to his hearing held on Tuesday, October 11th, then, on October 28th, 1955 unjustly assessed him with thirty working days' suspension without compensation from September 23rd, 1955 to November 3rd, 1955 (exclusive of his 12 regular relief days.)

2. That the Pullman Company be ordered to make this employee whole and reimburse him for the aforesaid 30 days' loss of time at his rate of pay applicable to each of those days.

EMPLOYEES' STATEMENT OF FACTS: The Pullman Company, hereinafter called the carrier, employed N. Cloudy as a car cleaner at Sunnyside Yards, Long Island, New York, on June 25, 1946 and as such, he has remained continuously in the service with an excellent record for over nine years.

Nevertheless, the carrier on Friday, October 7, 1955 summoned Car Cleaner N. Cloudy, hereinafter referred to as the claimant, to stand trial at 10:30 A.M. Tuesday, October 11, 1955, on the charge of using **physical violence** upon the Electrician B. Gordon, during the time he was on duty Thursday, September 22, 1955, which is affirmed by the copy of letter submitted herewith addressed to the claimant by his general foreman, identified as Exhibit A.

The claimant's day in court (hearing) was held as scheduled, which was terminated when the general foreman said:

"If there is nothing further in connection with this case, the meeting is completed at 2:50 P.M. E.S.T. The decision will be rendered in accordance with the present agreement between The Pullman Company and its yard employees."

Also, in Third Division Award 2769, Docket No. 2677, the Board, under **OPINION OF BOARD**, stated:

" . . . 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." (See also Third Division Awards 419, 431, 1022, 2297, 2632, 3112, 3125, 3149, 3235, 3984, 3985, 3986, 5011, 5032, 5881 and 5974.)

The Pullman Company submits that its disciplinary action with respect to Car Cleaner Cloudy was neither arbitrary, without just cause, nor in bad faith; that the charge against Cloudy was substantiated by positive evidence of probative force; and that neither prejudice nor bias influenced the company in its decision. Accordingly, the discipline assessed Cloudy should not be disturbed.

CONCLUSION

In this ex parte submission the company has shown that on September 22, 1955, Car Cleaner Cloudy engaged in the altercation with Electrician Gordon, during which altercation he used physical violence. Also, the company has shown that awards of the National Railroad Adjustment Board support the company's position in this dispute. The organization's claim he was unjustly given a 30-day suspension from service and is entitled to be paid for 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 claimant was tried and found guilty of the following charge: "You engaged in an altercation with Electrician B. Gordon using physical violence upon him, as a consequence of which he sustained a head injury." For this offense the claimant was suspended for thirty (30) days, without compensation.

The implications of the charge are (1) that the claimant was the aggressor; (2) that he exerted unjustifiable violence against Gordon; and (3) that Gordon's head injury proximately resulted therefrom. We have carefully scrutinized the transcript of the evidence and we do not find that it supports any of aforesaid elements of the charge. On the contrary, it appears quite clearly and definitely that Gordon was the aggressor; that he made threaten-

ing gestures toward the claimant with a hydrometer box after which the claimant grappled with him in self defense; and that Gordon suffered only a slight bump on the head, which he admitted may have been inadvertently inflicted.

Since the finding against the claimant does not rest on evidence of probative value it must be concluded that the hearing was unfair.

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AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.