

Award No. 2583
Docket No. 2422
2-PULL-EW-'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 (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement The Pullman Company on October 27, 1955 unjustly assessed a warning on the service record of Electrician H. J. McCluskey for an air conditioning failure on Car CASCADE BLUFF after leaving Pittsburgh for Chicago at about 11:00 PM, July 14, 1955.

2. That accordingly The Pullman Company be ordered to remove the warning notation made on the service record of this aforesaid employe.

EMPLOYEES' STATEMENT OF FACTS: The Pullman Company, hereinafter called the carrier, employed H. J. McCluskey as an electrician in its Pittsburgh District on October 4, 1920 and who has remained in the service since then or for more than thirty-five years.

The carrier made the election belatedly, on September 8, 1955, to summon the claimant to appear for a hearing at 1:00 P.M. on September 13, 1955 on an alleged charge which occurred on July 14, 1955 or fifty-five days before this date of notice. This hearing, however, was postponed and held by mutual understanding between the parties on September 29, 1955.

The carrier's foreman, J. W. Brown, furthermore elected to notify the claimant under date of October 27, 1955 belatedly, or twenty-eight days after his hearing was concluded, that his service record would be assessed with a warning.

This dispute has been progressed with the carrier up to and with the highest officer designated thereby to handle such dispute and, consequently, he has declined to adjust it.

MR. McCLUSKEY: If it was making contact.

MR. SMALL: When you jumped out your 76 degree thermostat.

MR. McCLUSKEY: Yes.

MR. SMALL: And you—and that jumper was in there, which they claim was—you'd have never got a speed control circuit.

MR. McCLUSKEY: If it was making a contact across the 32 volt in the receptacle, you're right. I didn't get a reading on it."

CONCLUSION

In this ex parte submission the company has shown that on July 14, 1955, Electrician McCluskey failed to make a proper test of the speed control circuit on car CASCADE BLUFF after removing the 220 volt standby cable, as a result of which improper action there was an air conditioning failure in car CASCADE BLUFF when this car was used in service. The company properly imposed a "Warning" upon him.

The National Railroad Adjustment Board has repeatedly held that where the carrier has not acted arbitrarily, without just cause or in bad faith, the judgment of the Board in discipline cases would not be substituted for that of the carrier. In Second Division Award 1323, the Board sets forth its opinion as follows:

"... 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, and Third Division Awards 3112, 3125, 3149; and Fourth Division Award 257.)

The claim of the organization in behalf of Electrician McCluskey 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 employees 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.

On October 27, 1955, the carrier assessed the claimant with a disciplinary warning on a finding that he was guilty of failing to make a proper test of the speed control circuit of car Cascade Bluff after removing the 220 volt standby cable at Pittsburgh, resulting in an air conditioning failure when said car was used in service.

9 Cascade Bluff was in service from Pittsburgh, (where claimant was employed), 11:09 PM to Chicago, 7:00 AM. During the run the air conditioning equipment failed to function, and upon the arrival of the car at Chicago it was discovered that there was a piece of wire in the 220 volt standby receptacle which had caused a short.

3 + The claimant testified positively that he properly serviced and inspected the electrical equipment and that it was operating properly when the car left Pittsburgh. (No one disputed the claimant's testimony) and the hearing official appears to have resolved the controversy upon the theory that if the claimant was not guilty, then who was? (This kind of reasoning had the effect of shifting the burden of proof from the carrier, where it properly belonged, to the claimant.)

2 After a careful examination of the record we are of the opinion that the carrier's finding is unsupported by the evidence.

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.