

Award No. 2809

Docket No. 2600

2-PULL-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when 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 unjustly assessed Electrician L. L. Petty's service record with a "warning".

2. That accordingly The Pullman Company be ordered to remove this "warning" from his service record.

EMPLOYEES' STATEMENT OF FACTS: Electrician L. L. Petty, hereinafter referred to as the claimant, was employed by The Pullman Company as an electrician at the Miami District on December 9, 1948, and has been in their service ever since.

Under date of July 5, 1956, the claimant was notified to appear for a hearing at 1:00 P.M. July 12, 1956, on which date the hearing was completed; a copy of this hearing record is submitted as shown as Exhibit A.

Under date of August 2, 1956, H. E. Nichols, Foreman, Miami District, notified the Claimant that his service record would be assessed with a "warning"; a copy of this decision is submitted and identified as Exhibit B.

Under date of September 14, 1956, we appealed this decision; a copy of this appeal is submitted and identified as Exhibit C.

Under date of October 12, 1956, Mr. Dodds, appeals officer, denied our appeal; a copy of this denial is submitted and identified as Exhibit D.

Under date of October 16, 1956, we notified Mr. Dodds that we intended to appeal his decision; a copy of this notification is submitted and identified as Exhibit E.

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

"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.)

CONCLUSION

In this ex parte submission the company has shown that Electrician Petty did not properly perform his work in car Golden Fleece on June 13, 1956, as a result of which failure the air conditioning equipment in the car did not function properly between West Palm Beach and Jacksonville, June 14, 1956. Also, the company has shown that awards of the National Railroad Adjustment Board support management in this dispute.

The claim of the organization 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 were given due notice of hearing thereon.

This is a discipline matter. Claimant requests that this Board direct carrier to remove a "warning" from his record.

The warning in question was imposed after investigation, and concerned the installation and application of speed control brushes to the speed control of a car's air conditioning equipment.

It is well settled by prior awards of this Board that we will not substitute our judgment for that of the carrier where (1) the investigation rules have been strictly complied with (2) the action of the carrier is not arbitrary or capricious (3) there exists substantial evidence of guilt, and (4) the penalty imposed is neither excessive or unreasonable.

On the basis of the record as a whole, we are of the opinion that the action of the carrier affirmatively meets the above criteria, so therefore the action taken will not be disturbed.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March, 1958.