

**Award No. 3001
Docket No. 2799
2-PULL-CM-'58**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting 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 Car Cleaner C. R. Cook of Eckington Yards, Washington, D. C. was unjustly dealt with when he was wrongfully withheld from service on January 20, 1957, pending the holding of a hearing on January 30, 1957.

2. That under the provisions of Rule 35 the Carrier was not authorized to withhold Car Cleaner C. R. Cook from service and to unjustly suspend him from service to February 16, 1957.

3. That accordingly the Carrier be ordered to compensate him for the wage loss during the period of January 20, through February 16, 1957.

EMPLOYEES' STATEMENT OF FACTS: Car Cleaner C. R. Cook, hereinafter referred to as the claimant, regularly employed by the carrier at the Eckington Yards, Washington, D. C. since December 18, 1941, on the 3:00 P.M. to 11:00 P.M. shift except during the period of July 31, 1942 to December 16, 1945, when he was in the Armed Service of the United States Army.

On January 20, 1957, the carrier's general foreman, Mr. L. J. McKay withheld Car Cleaner C. R. Cook from service. Under date of January 26, 1957, the claimant was advised by registered mail to appear for a hearing at 10:00 A.M., January 30, 1957, on the charge contained in the copy of letter addressed to the claimant by Mr. L. J. McKay, submitted and identified herewith as Exhibit A.

" . . . We think the evidence affirmatively shows that Domantay stubbornly refused to perform his assigned work without justifiable excuse. The claim of poor health was clearly an afterthought. The claim that he had on a previous occasion been taken from a train when ill does not appear to furnish a sufficient excuse, especially when all the facts surrounding it are not before us.

If the employees are permitted to arbitrarily shirk their responsibilities for such excuses as are given here, carriers' service to the public would become chaotic. We are convinced that the evidence is sufficient to sustain the decision of the Carrier. We find no support in the claim that the Carrier acted in an unjust, unreasonable or arbitrary manner. A suspension from service for 30 days appears to have been warranted, as the Carrier found."

CONCLUSION

In this ex parte submission the company has shown that on January 20, 1957, Car Cleaner Cook refused to comply with the instructions of Assistant Foreman Hiett that he properly scrub the tiling in the men's smoking room in car Poplar Range and persisted in his refusal when General Foreman McKay questioned him concerning his actions. Also the company has shown that management complied with the provisions of Rule 35 in the action taken with Cook. Finally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The claim that Car Cleaner Cook improperly was given a suspension of 20 work days covering the period January 20-February 16, 1957, 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.

There was ample evidence adduced at the hearing to support the company's determination that the claimant was guilty of the charge of refusal to comply with instructions of an assistant foreman.

It is contended that this was not a proper case for withholding the employe from service pending a hearing under Rule 35. It is noted that the general foreman several times asked the claimant if he meant that he was not going to properly scrub the tiling on cars that he was assigned to clean if he went back on the line. When claimant persisted in not answering, the general foreman withheld him from service. It appears there was very little else to do and that the withholding from service was solely due to the fault of the claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.