

Award No. 3530

Docket No. 3494

2-PULL-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone 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 unjustly discharged Electrician W. B. Heidotting from service effective May 16, 1959.

2. That accordingly The Pullman Company be ordered to reinstate Electrician W. B. Heidotting with all seniority rights and all other rights unimpaired and to compensate him for all time lost since May 16, 1959.

3. That accordingly The Pullman Company be ordered to clear the record of the charge preferred against Electrician W. B. Heidotting.

EMPLOYEES' STATEMENT OF FACTS: Electrician W. B. Heidotting, hereinafter referred to as the claimant, was employed by The Pullman Company at the Cincinnati District on July 22, 1925 and has been in their service ever since.

Under date of April 16, 1959, the claimant was notified to appear for a hearing at 1:30 P.M. April 23, 1959; a copy of this hearing record is submitted herewith and identified as Exhibit A.

Under date of May 16, 1959, Superintendent M. Gieseke, notified the claimant that he was being discharged from the service effective May 16, 1959.

Under date of May 19, 1959, we appealed this decision; a copy of this appeal is submitted herewith and identified as Exhibit C.

Under date of June 12, 1959, Mr. Dodds, Appeals Officer, denied our appeal; a copy of this denial is submitted herewith and identified as Exhibit D.

Under date of June 15, 1959, we notified Mr. Dodds that we intended to appeal his decision; a copy of this notification is submitted herewith and identified as Exhibit A.

The agreement effective July 1, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYEES: Rule 52 of the controlling agreement captioned "Discipline" reads in pertinent part as follows:

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, 1509, 1544, 1548, 1763, 1768, 1786, 1812, 2118, 2125, and Fourth Division Award 257.)

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."

CONCLUSION

In this ex parte submission the company has shown that on November 6, 1958, Electrician Heidotting was under the influence of intoxicants. Also, the company has shown that the arguments advanced by the petitioner in Heidotting's defense are unsound. Finally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The petitioner's claim that Heidotting was improperly discharged on May 16, 1959, 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.

The detailed written statements of the Foreman and Assistant Superintendent read and placed in evidence at the investigation furnished substantial and apparently disinterested evidence to support the charge involved. The so-called discrepancies are minor and not necessarily contradictory. In such case it is not our province to weigh the evidence.

The investigation as required by the rules was not a judicial proceeding nor do their strict rules of evidence apply. As commonly recognized in extra-judicial proceedings, written statements may be received in evidence in the absence of showing of prejudice thereby. This is in accord with common sense and justice and many awards of the several Divisions of this Board wherein able and distinguished jurists assisted. No prejudice here appears and no request was made by claimant either to examine or interview those making the statements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1960.