

**Award No. 3538**  
**Docket No. 3454-I**  
**2-PULL-I-'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.

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**PARTIES TO DISPUTE:**

**MURTIES BURNLEY, CAR CLEANER**  
**THE PULLMAN COMPANY**

**DISPUTE: CLAIM OF EMPLOYEE:** "Claim that Murties Burnley was unlawfully and without just and sufficient cause discharged on the 9th day of February 1959, and has since been withheld from service. He claims the right to be reinstated to position of Car Cleaner with earnings for all time lost for reason of said unlawful discharge, less earnings from outside employment."

**EMPLOYEES' STATEMENT OF FACTS:** Claimant was employe of respondent carrier: as car cleaner. There was in effect a labor agreement between the Pullman Company and Brotherhood of Railway Carmen in which claimant has membership.

Claimant reported for work on December 7, 1958. It is undisputed that he was alright and showed no indication of being under the influence of intoxicants. He was in the presence of several witnesses from 7:40 A.M. to 8:50 A.M. and still appeared normal. About 9:00 A.M. he complained to a fellow servant he had upset stomach. The fellow servant administered aid. About 30 minute later—9:35 A.M.—he reported his illness to his superior with a request for leave because of illness. The superior granted him leave using language, "Burnley, seeing you're sick you should go home." As an afterthought, **one month later**, a charge of under the influence of intoxicants is filed.

We contend:

- (1) Carrier acted arbitrary and in bad faith in waiting one month before filing charges and in filing the charge itself.
- (2) Carrier acted arbitrary and in bad faith in conducting an investigation in which the same person served as witness, judge and jury.
- (3) Carrier acted arbitrarily and in bad faith in finding claimant guilty.
- (4) Carrier acted in bad faith and arbitrarily in assessing excessive punishment.

closed 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 on December 7, 1958, Cleaner Burnley was under the influence of intoxicants. Also the company has shown that the arguments advanced by the petitioner in Burnley'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 Burnley was improperly discharged on February 9, 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant's condition was first noticed when he sought out the Relief Foreman to report sick and ask to go home; he was permitted to go home and to drive away in his own car; he was not withheld from service but continued in service for a month before being notified of investigation, and his record showed no disciplinary action since a warning eight years before.

In view of the peculiar circumstances of this case we think the penalty imposed of dismissal from service was excessive and arbitrary and that claimant should be reinstated with full seniority rights but without pay for time lost.

### AWARD

Claim for reinstatement with full seniority rights sustained, but without compensation for wage loss.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1960.