

Award No. 4422

Docket No. 4294

2-PULL-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement carman painter Mr. M. Williams Calumet Shops was unjustly dealt with when he was dismissed from the service of the Pullman Company on February 28, 1962.

2. That accordingly the Pullman Company be ordered to reinstate carman painter Mr. M. Williams with all service rights, vacation rights and all other rights fully restored, including vacation earned or that which would have been earned and further, that he be paid for all time lost since February 28, 1962.

EMPLOYEES STATEMENT OF FACTS: Carman M. Williams, hereinafter referred to as the claimant, is employed as such by the Pullman Company, hereinafter referred to as carrier, as a painter in its Calumet shops, Chicago, Illinois.

On January 19, 1962, 3:47 P.M., Mr. Williams was assigned to spray trucks, using a paint which Mr. Williams is allergic to. Mr. Williams so advised the foreman of his allergy to that particular paint and pointed out the fact that there were two junior painters available but the foreman insisted he spray the trucks. Mr. Williams then advised the foreman that inasmuch that he could not possibly spray with the paint he was allergic to, and as there were two other painters there who could do that work, he would go home rather than impair his health.

On January 25, 1962, the Pullman Company wrote to Mr. Williams advising him that a hearing would be accorded him on the charge that after reporting for work on January 19, 1962, he refused to perform work assigned to him by his supervisor and left work without permission or authority.

On Monday, February 12, 1962, a hearing was held on the charge specified in the Pullman Company's letter. On February 28, 1962, the claimant was

MR. WILLIAMS: I didn't go to the doctor here. I go to my own doctor. He asked me if there is any lead in the paint with which I spray because if there is lead in the paint, lots of Sprayers get lead in their stomach, but they say there is no lead in this paint."

There has been no abuse of discretion in the action taken by the company with Painter Williams for his insubordination in two respects on January 19, 1962. The company submits that its action in discharging Williams was fully justified by the facts of record.

The claim in behalf of Painter Williams 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.

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

Claimant contends that he was unjustly dealt with when he was dismissed from Carrier's service on February 28, 1962.

Claimant was charged with refusing to perform work assigned to him and with leaving work without permission or authority.

A hearing was conducted, the transcript of which has been reviewed by us, resulting in the dismissal complained of.

In our Award 2809 we stated:

"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."

An examination of this record, together with the arguments and statements made, supports the conclusion that we cannot disturb the findings and resultant discipline imposed by the Carrier in this matter.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.