

Award No. 4710

Docket No. 4556

2-PULL-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, carman J. M. Adams, Washington, D. C. was unjustly assessed a "warning" on his record, January 7, 1963.

2--That accordingly, the Pullman Company be ordered to remove said "warning" from the record of Carman J. M. Adams.

EMPLOYEE'S STATEMENT OF FACTS: On December 10, 1962, the Pullman Company, hereinafter referred to as the carrier, wrote Mr. J. M. Adams, carman, to appear for a hearing at 9:30 A.M., December 19, 1962, on the charge that during his tour of duty on November 1, 1962, he had failed to properly make repairs to the public toilet in car GUYANDOTTE.

On December 19, 1962, the hearing was held in the general foreman's office.

On January 7, 1963, Mr. Adams was notified by the carrier that it was their decision that he be assessed with a "Warning."

This dispute has been handled with all carrier officials with whom such matters are subject to be appealed, without satisfactory results. The agreement effective June 16, 1951, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier's action in assessing a "Warning" to the record of the claimant was unfair, unjustified and unreasonable.

The claimant has worked for the carrier for 20 years without a mark against him. He is proud of his record, and further, the carrier has failed to prove that the claimant did not make proper repairs to the public toilet in car GUYANDOTTE, on November 1, 1962.

On November 1, 1962, during his tour of duty, the claimant applied a valve core to the public toilet hopper valve in car GUYANDOTTE. Before

provisions of Rule 35 of the agreement. Further, it is noted that when the dispute was progressed to the Second Division, National Railroad Adjustment Board, under date of November 26, 1963 no claim was made that the employe was not granted a fair and impartial hearing.

The evidence adduced in the hearing December 19, 1962, shows that Carman Adams is guilty as charged. The imposition of discipline, a warning, was justified, and notation to that effect should be permitted to remain on Adams' service record. In this connection, the company wishes to direct the attention of the board to the following excerpts from the awards of this and other Divisions of the Board:

"This Board is loathe to interfere in cases of discipline if there is any reasonable ground upon which it can be justified. (Second Division Award 1109)

* * * * *

. . . it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action 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. (Second Division Award 1323)

* * * * *

In proceedings such as these we do not examine the record of testimony to determine weight or creditability. We look for substantial and satisfactory support, and when that is found our inquiry ends. Awards upon this point are so numerous as to make citation of any of them unnecessary." (First Division Award 14552)
Also see Third Division Awards 10071, 9455 and 7775.

CONCLUSION: In this ex parte submission, the company has shown that on November 1, 1962, Carman Adams failed properly to make repairs to the main toilet in car GUYANDOTTE. Additionally, the company has shown that the hearing accorded Carman Adams on December 19, 1962, was in strict compliance with the Agreement, with particular reference to **Rule 35. Discipline**. Also the company has shown that Awards of the National Railroad Adjustment Board support the company in this dispute.

The claim of the organization that the company unjustly assessed a warning upon Carman Adams 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 waived right of appearance at hearing thereon.

Claimant herein seeks to have a warning notation removed from his service record. A hearing took place on the charge that Carman Adams failed to make proper repairs to a toilet.

It is not disputed that Claimant applied a valve core to the public toilet hopper valve in car Guyandotte. After the repair was made it became necessary to lock the toilet and turn the water off because the water kept running. The Carrier alleges that Adams did not do the job properly, the malfunction was not corrected and a light penalty of placing a warning notation in the Claimant's service record was justified. The Organization contends that Adams was proud of his unblemished record of twenty years of service and that the penalty was unreasonable and unjustified.

From a reading of the transcript of the hearing and the record as a whole it is clear that Adams performed the job; that he was not derelict in his efforts to correct the malfunction; that his efforts were unsuccessful.

In order to sustain the penalty the Carrier has the burden of proving that the failure of the repair job to correct the malfunction warranted the imposition of the penalty assessed against the Claimant.

The assessment of the warning would not seem to be in accordance with the evidence adduced and the Claimant is therefore entitled to the relief sought by him.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.