

Award No. 4872
Docket No. 4816
2-PULL-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon 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, coach cleaner Mrs. Ruth Blackburn was unjustly dismissed from the services of the Pullman Company on November 23, 1964.

2. That accordingly, the Pullman Company be ordered to restore Mrs. Ruth Blackburn to the service and paid for all time lost including vacation, health and welfare benefits, and any other benefits due her under the provisions of the current working agreement.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Ruth Blackburn, hereinafter referred to as the claimant, was employed by the Pullman Company, hereinafter referred to as the carrier, as a car cleaner, working five days a week, 8 hours per day, when she was dismissed from the services of the carrier as a result of a hearing accorded her under date of November 5, 1964.

The hearing accorded the claimant was account allegedly being under the influence of intoxicants during her scheduled working hours of June 5, 1964 and July 10, 1964.

The Agreement effective June 16, 1951, as amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant committed no offense which should have caused the supervision of the Pullman Company to discharge here from the services of the railroad.

On June 5, 1964, the claimant became ill at work and was off work account this illness until July 6, 1964. The transcript of the hearing, is a statement made by Dr. P. Mayer attesting to the fact that the claimant was under his care from June 5, 1964 until June 29, 1964, account "Acute Anxiety State".

On June 5, 1964, the date the claimant became ill, Foreman Glander stated the claimant was unsteady on her feet and that she was sleeping in car Regal

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."

There are numerous awards that should be considered as significant in a discharge dispute of this kind. A few of such awards are Second Division Awards 2125, 2118, 1812, 1786, 1768, 1763, 1548, 1544, 1509, 1253, 1157, 1109, 1041 and 993. Also see Third Division Awards 10642, 10101, 10071, 10049 and 9455.

CONCLUSION

In this ex parte submission the company has shown that on June 5, 1964 and again on July 10, 1964, Cleaner Blackburn was under the influence of intoxicants during her scheduled working hours. The company has shown that supervisory personnel of the company observed firsthand that Cleaner Blackburn was under the influence of intoxicants on the two dates in question and that it was upon this competent evidence that disciplinary action was taken with Cleaner Blackburn. Also, the company has shown that it correctly gave consideration to two previous incidents of similar nature appearing on Cleaner Blackburn's service record, which procedure it has been shown herein confirmed by numerous awards of the National Adjustment Board. Finally, the company has shown that the action taken with Cleaner Blackburn was not arbitrary, capricious, unfair or unreasonable in any manner whatsoever.

The organization's claim that Cleaner Blackburn was unjustly dismissed from the service of The Pullman Company on November 23, 1964, is without merit in light of the factual record in this case, and the claim 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.

The allegations of the parties are not susceptible to a clear cut determination by this Board. Under these circumstances, we believe the employe should be permitted to return to service with all seniority rights restored. Claim for pay for time held out of service is denied.

AWARD

Claim sustained in part and denied in part, as per the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1966.

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