

**Award No. 5153**

**Docket No. 4877**

**2-PULL-EW-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when 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. The Pullman Company violated Rule 27 of the current agreement when they refused to allow Electrician Napoleon Bishop to complete his bulletined hours.
2. The Pullman Company also violated Rule 58 of the current agreement when the Assistant Foreman discriminated against this employe by not considering the explanation given by the employe as to why he was late for work.
3. That accordingly, the Pullman Company, be ordered to compensate Electrician Bishop for six hours and twenty minutes.

**EMPLOYEES' STATEMENT OF FACTS:** Electrician Bishop, hereinafter referred to as the claimant, was employed by the Pullman Company, hereinafter referred to as the carrier, as an electrician at Chicago, Illinois on December 24, 1937, and has worked continuously as such since that date. On April 15, 1964, the claimant reported for work one hour and twenty minutes late, and explained the reason to the assistant foreman, who rather than accept the reason, elected to refuse to allow claimant to go to work and directed him to return home.

**POSITION OF EMPLOYEES:** It is submitted that when the claimant was unavoidably kept from reporting for work on time, one hour and twenty minutes late, but did make a reasonable attempt to notify the carrier that he would be late, the claimant did in fact comply with rule 58 in every respect.

**"RULE 58.**

**UNAVOIDABLY KEPT FROM WORK**

In case an employe is unavoidably kept from work he shall not be discriminated against. An employe detained from work on ac-

The charge, as laid, must be supported by fact. On the theory that the one affirmatively charging a violation is the moving party, and, therefore, should be in possession of the essential facts to support the charge before making it, this Division of the Board is committed to the so-called 'burden of proof' doctrine. See Awards 3469, 5345, 5962, 6829, 6839."

### CONCLUSION

In this submission the company has shown that **Rule 27. Allowed to Complete Balance of Day** is not applicable to this dispute where the employee reports two and one-half hours late for work in an unfit condition to complete the "balance of day." Also, the company has shown that **Rule 58. Unavoidably Kept From Work** is not germane to the instant case because there is no showing in the record that Electrician Bishop was unavoidably prevented from reporting for work at his normal reporting time, 11:00 P.M., April 15, 1964. Finally, the company has shown the organization has not brought forward sufficient facts to prove its claim that the contract was violated in the manner complained of.

Inasmuch as there has been no violation of rules 27 or 58 or of any other provisions of the agreement, the organization's claim in this case is without merit, and it 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 employee or employees involved in this dispute are respectively carrier and employee 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 was regularly assigned to work in the Illinois Central Yard on the 11:00 P.M.-7:00 A.M. shift.

On the night of April 15-16, 1964, Claimant arrived at the Illinois Central Yard at approximately 1:30 A.M. in an unfit physical condition to work.

Assistant Foreman Goeltz, who was on duty, observed that the claimant talked incoherently and smelled of the odor of intoxicants. Having noted this, Assistant Foreman Goeltz sent claimant home in the interest of claimant's personal safety.

On May 12, 1964, claimant submitted claim in his behalf in which it was alleged he reported for work at 12:20 A.M. on the night of April 15, 1964 and Claimant was told to go home. No rule of the agreement was identified as having been violated, but claimant requested compensation in the amount of 6 hours and 20 minutes.

The Claimant was under the influence of intoxicants when he reported for work on April 15-16, 1964, 2½ hours late. His regular reporting time was

11:00 P.M. on the days in question. He reported at 1:30 A.M., instead of 11:00 P.M., in an unfit condition physically to work in a railroad yard.

He talked incoherently and smelled of intoxicants. As a matter of fact, when he did report for work 2½ hours late, he put his bag down and a can of Pabst Blue Ribbon Beer rolled out of it.

Claimant put the can of beer back in his bag and left. From the record Claimant was addicted to liquor, and due to that fact, Claimant had not reported for work on time on either April 14, 1964 or August 29, 1962.

Under the said facts, the Carrier did not violate any of the rules of the contract, particularly Rule 58 or Rule 27, and the Carrier was justified under the facts in sending the Claimant home.

The claim herein is accordingly denied.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **SECOND DIVISION**

**ATTEST:** Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.