Award No. 3984
Docket No. PC-3892

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and on behalf of Conductor Paul Seeds, Fort Worth District, that The Pullman Company acted unjustly and in abuse of its discretion, also discriminated against him, when on April 4 and 5, 1947, they declined to permit him to operate in his regular assignment, thereby penalizing him for two (2) round trips, the equivalent of two and one-half (2½) days pay.

It is further claimed that Conductor Seeds' record should be cleared of charge placed against him and that he should be compensated for the two and one-half (2½) days loss of time.

OPINION OF BOARD: The claimaint, Pullman Conductor Paul Seeds, was employed by the Carrier on September 6, 1943, and so far as this docket discloses, has always been assigned to a run between Ft. Worth and Denison, Texas. On this run he was required to report at Ft. Worth daily at 8:25 p. m., and was released at Denison at 11:40 p. m. He was required to report for duty at Denison at 6:00 a. m., on the day following, for the return trip to Ft. Worth, and released at that point at 8:50 a. m. The layover period at Denison was 6 hours and 20 minutes, and at Ft. Worth 11 hours and 35 minutes.

On Feburary 5, 1947, Conductor Seeds reported at Ft. Worth for his regular run, made the same and was released at Denison at 11:40 p. m. He did not report for his return trip from Denison to Ft. Worth at 6:00 a. m. on February 6. On that date he reported to Carrier's District Superintendent by letter, giving as his excuse for his failure to report the claim that his small alarm clock failed to awaken him, stating in his letter that "This is the second time within a 7 month period that the little clock failed to awaken me." He indicated his willingness to give up the run, but also his desire to retain it. His case was given an investigation on May 7, 1947, after considerable correspondence had passed between claimant and the District Superintendent. The docket discloses that on September 2, 1946, while on the same run, claimant had failed to report at Denison for his regular run, as a result of which he was given a "warning" which stood on his service record against him. The claimant's letter of February 6, 1947, shows that such failure was attributed to the fact that his alarm clock did not awaken him, and no other excuse was offered, but in the correspondence mentioned above, claimant advanced the contention that his failure to report on September 2, 1946, was due, at least in part, to illness, and the docket discloses that he may have suffered from a slight heart attack on that occasion. On April 1, 1947, the District Superintendent wrote claimant concerning the February 6, 1947, occurrence the following:

"Because of your failure in this connection, it is my decision that you be given an actual suspension from duty of two round trips (2½ days) in your present regular assignment. Therefore, you will not go out in your run on April 4th and 5th, 1947.

This is to advise that in arriving at the degree of discipline imposed upon you in this case, I have taken into consideration the fact that according to your service record you previously failed to protect an assignment to service on September 2, 1946, as a result of which you were given a 'warning'."

The case was progressed through investigation and hearing, on May 7, 1947, and up to the Assistant Vice President of the Carrier, who on July 28, 1947, wrote the General Chairman that:

"After carefully considering the evidence presented at hearing accorded Conductor Seeds, it is my opinion the charge preferred against him has been clearly substantiated and I consider that the discipline administered was fully justified."

Petitioner, in its statement of claim, contends that the Carrier unjustly dealt with claimant, abused its discretion in imposing discipline, and also discriminated against him in so doing. It asks that claimants's record be cleared of the charge placed against him, and that he be compensated for two and one-half days of lost time.

We do not think any discrimination against claimant has been shown. It is true that in some cases, perhaps in cases substantially similar, discipline was not imposed; but in cases of this character, whether or not discipline shall be imposed, depends, to a very great extent, on the facts of each case, and this Board, from the meager details furnished, cannot say that what the Carrier did in other cases, as compared to its action in this case, amounted to discriminatory conduct towards claimant. "Mere comparison with one or two instances of other disciplinings in an attempt to show too severe disclipine in this case at hand does not suffice." See Awards 1310 and 2645 of this Division.

The policy of this Division, in respect to cases of discipline, was established early in its existence. See Awards Nos. 71 and 135, supported by later awards, among which are Nos. 1848, 1996, 2216, 2632. In Award 2769 the rule was stated in the following language:

"In its consideration of claims involving discipline, this Division * * * (1) where there is positive evidence of probative force will not weigh such evidence or resolve conflicts therein, (2) when there is real substantial evidence to sustain charges the findings based thereon will not be disturbed; (3) if the Carrier has not acted arbitrarily, without just cause, or in bad faith its action will not be set aside; and (4) unless prejudice or bias is disclosed by facts or circumstances of record it will not substitute its judgment for that of the Carrier."

The last clause of this holding is reiterated in subsequent awards of this Division, particularly by Awards Nos. 3178, 3411 and 3618.

Applying the principles of the awards cited, we are unaable to see how we could justify an interference with the Carrier's discretion as exercised in this case. Claimant admits the truth of the charge against him, but attempts to excuse it. It was his second offense of the same nature, and in both instances fault was attributed to the same alarm clock, but later the excuse, as to the first offense, was laid to illness. The Carrier, having once warned the claimant, could not be expected to overlook a repetition, within a few months, of the offense for which its "warning" was given. It has the right to enforce rules promulgated by it in its own interest, and that of the public, by imposing reasonable discipline. The discipline imposed in this case was not severe, and there is no appearance of arbitrary conduct, caprice or bad faith, and, therefore, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement in imposing the discipline of which the petitioner complains.

AWARD

Claims (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of July, 1948