

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, 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 in behalf of Conductor R. Vorburger, Pennsylvania Terminal District, that:

1. Under date of April 2, 1951, The Pullman Company dismissed Conductor Vorburger from the services of the Company, unjustly and in abuse of its discretion.

2. We now ask that Conductor Vorburger be restored to service, with full seniority rights; and compensated for the time lost; also that his record be cleared of the charges.

OPINION OF BOARD: This is a discipline case. Claimant was charged with indulging in the use of intoxicants while being in regular service on Pennsylvania Railroad Train No. 66, St. Louis, Missouri, to New York City.

After proper hearing, claimant was dismissed from the service.

The pertinent facts are not in dispute except as to the number of drinks claimant consumed on the trip.

Claimant admits taking two drinks of scotch whiskey and further admits that this is a proper case for discipline. The evidence revealed other acts of indulging in drinks during the trip. However, there is conflicting evidence. On review we do not resolve the conflicting evidence nor the credibility of witnesses. The evidence introduced at the hearing was ample and of probative value to support the charge. The claimant does question the discipline inflicted, maintaining that the punishment of dismissal was not in due proportion to the offense committed and was an abuse of discretion. This presents the question of whether or not the action of the Carrier in dismissing Vorburger was unreasonable, arbitrary, or capricious.

The mitigating facts reveal that Vorburger has been employed for over six years without ever being disciplined in any manner. That he was suffering from a severe cold which later developed into pneumonia. That he had been separated from his wife and was expecting to be reconciled. That while off duty, passengers noticed his condition and urged him to take a drink for his cold. He then took two drinks. No complaints were made by any passengers. Claimant readily admitted his transgression and repented.

As was said in Award 5835:

"In a case where the right of the Carrier to impose discipline has been demonstrated, as here, the discipline imposed should not be brushed aside or modified without good and sufficient reason. All the facts and circumstances should be weighed carefully before any such step is taken. Length of service, seniority, the kind of work engaged in, the responsibilities involved, the enormity of the violation, the probability of recurrence, past conduct, whether or not the act was wilful or was in the field of thoughtlessness or carelessness, the effect on discipline and service generally on the property, and all other pertinent considerations to the extent that they are shown by the record should be weighed and carefully considered, and if on such consideration it becomes clear that there has been an abuse of discretion corrective action should be regarded as authorized and proper and accordingly taken."

Indulging in intoxicants by this claimant cannot be condoned, however the penalty must be given only after consideration of all circumstances including those in mitigation.

Taking all the facts of the case now before us into consideration, we conclude that the discipline imposed was excessive and unreasonable. That any discipline short of dismissal would have been reasonable.

We further conclude that Vorburger should be reinstated with seniority rights unimpaired, but that his record should not be cleared of the charge nor should he be compensated for any loss of wages.

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 Employees involved in this dispute are respectively Carrier and Employees 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 discipline imposed was excessive and unreasonable.

AWARD

Claim sustained for restoration to service with seniority rights unimpaired. Claim denied in all other respects.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 5863
DOCKET NO. PC-5941

NAME OF ORGANIZATION: Order of Railway Conductors, Pullman System

NAME OF CARRIER: The Pullman Company

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Organization has requested an interpretation of Award No. 5863.

The Award ordered the Claimant to be restored to service with his seniority rights unimpaired. The Award denied his right to be compensated for time lost and to have his record cleared.

The last-cited Award was dated, and the order was issued, July 18, 1952. The Carrier notified the Claimant on September 18, 1952, of its willingness to restore him to duty. On September 30, 1952, the Claimant called at the Carrier's office to inform it he would go back to work. The Claimant was placed on the extra list October 2, 1952, and on October 4th performed his first service for the Carrier.

The Organization requests an interpretation of the Award "in respect to the date by which the Company should have carried out the terms of the Award, and further requests that the Company be directed to credit and pay Conductor Vorburger under appropriate rules of the Agreement compensation for all employment of which he was unjustly deprived."

In a monetary award, the Railway Labor Act, Section 3, First (o), requires the order of a Division of the Adjustment Board to show a specific date on or before which payment must be made by the Carrier. No such requirement is provided for non-monetary awards. In cases where no date is set for the performance of a non-monetary award, the date of the order is the effective date of the award, with a reasonable time for the Carrier to put the order of the Division into effect. The reasonable time must be ascertained from the facts of each case. In the instant case, the facts to be considered must be the time it took the Carrier to receive the award and order, to evaluate it, and notify the proper employees to put the award in effect, and the time it would take to contact the Claimant.

The above are facts to be considered. There may be others, but that is a matter for proof when the reasonable time is questioned by the Claimant.

We have no authority in this interpretation to make a money award. The award for money as herein requested must be handled on the property and proceed to this Board as any other claim.

The interpretation of Award No. 5863 is that it was effective July 18, 1952, with reasonable time allowed to the Carrier to place it in effect without liability.

Referee Paul G. Jasper, who sat with the Division as a member when Award No. 5863 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of March, 1953.