Award No. 10100

Docket No. PC-10237

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor G. J. Carter, Cleveland District, that:

1. The Company violated Rule 49 of the Agreement between the Pullman Company and its Conductors when it failed to furnish Conductor Carter with a full and exact copy of the original complaint within 15 days after receipt by Management—

2. That Conductor Carter was not notified in writing of the time and place of hearing, nor of the specific charge against him within 90 days from the date the Company received the original complaint as provided in Rule 49—

3. Inasmuch as the Company failed to notify Conductor Carter of the time and place of hearing, or make a specific charge against him within 90 days from receipt of the original complaint, the complaint is barred—

4. We now ask that Conductor Carter's record be cleared of the charges, and that he be compensated in full for all time lost in accordance with the Memorandum of understanding Concerning Compensation for Wage Loss, found on page 85 of the Agreement.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of January 1, 1951, and amendments thereto on file with your Honorable Board, and by this reference is made a part of this submission the same as though fully set out herein.

II.

For ready reference and convenience of the Board, the pertinent parts of Rule 49 which are directly applicable to this dispute, are quoted as follows:

The National Railroad Adjustment Board has on numerous occasions held that where the Carrier has not acted arbitrarily, without just cause, or in bad faith the judgment of the Board in discipline cases will not be substituted for that of the Carrier. In Fourth Division Award 775, Docket No. 750, the Board stated, with Wayne Quinlan sitting as Referee, as follows:

> "It is an established rule of this and other Divisions that the Board should not disturb the action of management in discipline cases unless the evidence clearly shows that the Carrier acted in bad faith, arbitrarily, and without just cause. We have carefully reviewed the transcript of the hearing and the remainder of the record. There is substantial creditable evidence, though it was denied, to sustain the findings of the Carrier. We cannot, therefore, say that the Carrier acted in bad faith, arbitrarily, and without just cause."

(Also see Fourth Division Awards 257, 935.)

In Second Division Award 1323, Docket No. 1256, the Board stated:

> ". . . 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" (See also Second Division Awards 993, 1041, 1109, 1157, 1253.)

Also, in Third Division Award 2769, Docket No. PM-2677, the Board stated, under OPINION OF BOARD, as follows:

> ". . . In Its consideration of claims involving discipline, this Division of the National Railroad Adjustment Board (1) where there is positive evidence of probative force will not weight 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." (See also Third Division Awards 419, 431, 1022, 2297, 2632, 3112, 3125, 3149, 3235, 3984, 3985, 3986, 5011, 5032, 5881 and 5974.)

The Company submits that the claim in behalf of former Conductor Carter should be dismissed for lack of jurisdiction or denied on its merits.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant operated as a conductor in regular assignment in line 6149, Cleveland-Baltimore and return, Baltimore and Ohio trains 18 and 17, during the period May 28 to October 1, 1956. By letter dated November 1, 1956, the Company's Superintendent requested the Claimant to explain irregularities in the manner in which he had handled certain cash

fare transactions which were listed in the auditor's reports dated October 19, 1956. Copies of such reports were included with the letter. The transactions involved occurred during the period from May 28, 1956 through September 27, 1956.

Claimant replied to the Superintendent by letter dated November 16, 1956, in which he stated that he was unable to locate certain missing cash fare checks, that he was unable to check certain shortages and as a result he was depositing "with Receiving Cashier, amount of $17.50 to cover both of these shortages," that "as to the late deposits of the balance of the checks, this was due to my extreme carelessness in the following of instructions," and that "at no time was there any attempt to defraud The Pullman Company of any of these earnings."

By letter dated December 24, 1956, the Superintendent notified Claimant that a hearing would be held at the time and place therein stated on the charge against him that during the period mentioned he

> "failed as required by instructions to deposit revenue collected from 24 cash fare checks issued by you and withheld the revenue for periods ranging from 2 to 128 days; further, you failed to report alleged loss of cash fare checks Nos. J-75781 to J-75786, inclusive."

The hearing was held as scheduled and the Claimant appeared and was represented thereat. Subsequently, Claimant was notified that he was suspended from service for five round trips because the evidence adduced at the hearing substantiated the charge. This appeal followed final denial of the *claim on the property.*

The claim is based on the contention of the Employes that Rule 49 of the applicable Agreement was violated in that the Company failed to furnish Claimant with a full and exact copy of the complaint within fifteen days of receipt thereof by the Company, that the Company failed to notify Claimant of the time and place of hearing or the specific charge against him within ninety days from the date of the original complaint, and that in accordance with the Rule, the complaint was barred because of the Company's failure to make a specific charge within such ninety days.

The Company objects to the jurisdiction of the Board because Claimant resigned from the service on January 26, 1958. With respect to the merits, the Company contends that no violation of the Rule relied on by the Employes occurred, that Claimant admitted his guilt and that he was properly tried and disciplined.

We find no merit in the Company's jurisdictional objection. During the entire time the claim was handled on the property, Claimant was an employe of the Company. His resignation from the service occurred after the Company's final denial of the claim and the right to appeal to the Board had accrued. See Award 5348. Awards 4583 and 4002 cited by the Company are not opposite. In those two cases, the Claimants resigned from employment before the claims were made.

The *Rule relied on by the Employes reads as follows:*

> "A conductor shall be furnished a full and exact copy of the original letter of complaint within 15 days after date of receipt by Management. . . . If a copy of the original letter of complaint is not given the conductor or mailed to him to his last recorded address

within 15 days from date of receipt by Management, the complaint shall be barred.

"The conductor shall be notified in writing of the time and place of hearing and the specific charge against him not later than 90 days from the date the Company receives the original complaint. If the Company fails to notify the conductor of the time and place of hearing or fails to make a specific charge against him within 90 days from receipt of the original complaint, the complaint shall be barred."

The Employes construe this Rule to mean that the 15 days and the 90 days time limitations specified therein are to be tolled from the dates of the occurrence of the transactions which were the subject matter of the charge against the Claimant. The language of the Rule precludes such an interpretation of its terms in the circumstances presented by the claim.

The Rule indicates that the time limitations therein provided are to be tolled from the date of receipt by the Company of an original letter of complaint or a complaint. Thus, the first paragraph, quoted above, states that "A conductor shall be furnished a full and exact copy of the original letter of complaint within 15 days **after date of receipt by Management**" and that the complaint shall be barred "If a copy of the original letter of complaint is not given . . . or mailed to . . ." the conductor "within 15 days **from date of receipt by Management.**" The second paragraph, quoted above, states that "The conductor shall be notified . . . not later than 90 days **from the date the Company receives the original complaint**" and that the complaint shall be barred "If the Company fails" to give the notice therein specified or to make a specific charge "within 90 days **from receipt of the original complaint.**" (Emphasis ours.)

If Rule 49 to the extent referred to is to be treated as applicable to the circumstances presented by the claim in the context of the contentions of the Employes, neither the Superintendent letter dated November 1, 1956 nor his letter dated December 24, 1956 can be regarded as the "original letter of complaint" or the "original complaint" within the meaning of the Rule because each of these letters was sent by the company. The Rule contemplates that the "original letter of complaint" or the "original complaint" will be a complaint received by the Company. If the Auditor's reports dated October 19, 1956 are regarded as the "original letter of complaint" or the "original complaint," then the Superintendent's letters were timely and copies of such reports were furnished to the Claimant within the time requirement.

For these reasons, and because the evidence does not show that the irregularities with which the Claimant was charged were apparent or discoverable when he turned in his cash fare checks and reports of cash fare sales to the cashier, Award 6092, cited by the Employes, cannot be regarded as controlling here.

Examination of the Rule relied on and of the record does not disclose any valid basis for the Board to disturb the disciplinary action taken by the Company against the Claimant.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.