

Award No. 10896

Docket No. PC-12118

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, 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 A. M. Williams, St. Louis District, that The Pullman Company violated the Agreement between The Pullman Company and its Conductors, with special reference to Rule 49, when:

1. The Pullman Company acted arbitrarily and capriciously in suspending Conductor A. M. Williams for one round trip — 7¾ days — from his run, beginning March 20, 1960.
2. The findings are not based on the evidence contained in the record.
3. We now ask that this charge be expunged from Conductor Williams' record, and that he be credited and paid for all lost time.

OPINION OF BOARD: This is a discipline case. The primary issue in this case is whether or not the Company acted arbitrarily and capriciously in suspending Conductor A. M. Williams for one round trip — 7¾ days — from his run, beginning March 20, 1960.

Petitioner contends, among other things, violation of Rule 49 (a) on the grounds that Claimant was disciplined without a fair and impartial hearing; also violation of Rule 49 (b) based on alleged failure to receive full and exact copy of the original letter of complaint within 15 days after date of receipt by Management; and violation of Rule 49 (d) for alleged failure to be notified in writing within 60 days of receipt by the Company of the original letter of complaint or written report.

We shall dispose of these contentions in reverse order and shall for convenience combine our determination with respect to the alleged violations of Rules 49 (b) and 49 (d) involving the timeliness of the actions by the Company.

We find from the proof in this record that the "original letter of complaint or written report" was received by Pullman Superintendent Bradfield on November 17, 1959, and a copy thereof was furnished Claimant Williams on that same date November 17, 1959. On January 14, 1960, Claimant Williams was notified in writing of the charge lodged against him.

The contention by Petitioner that a communication, not contained in this record, from Superintendent J. A. Shaver, Missouri Pacific Railroad Company dated November 9th, 1959, constituted a complaint or written report is without merit and cannot be sustained. To hold otherwise would involve pure conjecture and speculation as to the nature and content of the undisclosed communication. It therefore necessarily follows that Rules 49 (b) and 49 (d) were not violated.

We further find from the probative proof in this record that Conductor Williams received a fair and impartial hearing as provided in Rule 49 (a) and that the discipline imposed was justified and was made "upon evidence in the record which establishes guilt beyond a reasonable doubt" as provided in Rule 49 (i).

From a careful study of this entire record we find that Conductor Williams was guilty of using profane language as charged and that the 7¼ days suspension imposed was not unjust, capricious, unreasonable or arbitrary and that Claimant had a fair and impartial hearing. See Awards: 10595, 10596.

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 Employee involved in this dispute are respectively Carrier and Employee 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 contract 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 7th day of November 1962.

**DISSENT OF LABOR MEMBER TO AWARD 10896,
DOCKET PC-12118**

This Award is a gross miscarriage of justice and should be afforded no recognition.

The Referee ignored completely the provisions of Rule 49, upon which the claim was based.

The Award states:

“We find from the **proof** in this record that the ‘original letter of complaint or written report’ was received by Pullman Superintendent Bradfield on November 17, 1959, . . .”
(Emphasis ours.)

This is an incorrect statement. The record is devoid of any **proof** to this effect, only allegation on the part of the Company.

The record **does** show that under date of November 12, 1959, Supt. Bradfield wrote the following letter:

“276 Union Station
St. Louis 3, Missouri
November 12, 1959

Mr. J. A. Shaver
Superintendent
Missouri Pacific Railroad Company
Osawatomie, Kansas

Dear Mr. Shaver:

This will acknowledge receipt of your letter of November 9th, File 729-4, together with copy of your endorsement of same date to Mr. D. T. Barksdale, **concerning actions of Pullman Conductor Williams.**

In order that we may conduct a thorough investigation, would appreciate receiving a copy of Mr. Hobbs' letter outlining just what transpired on this trip.

If you will arrange to have Agent at Sterling, Kansas, furnish me with the dates Mrs. Wullner made her trips, I will be glad to handle with conductors at fault.

Very truly yours,

W. H. Bradfield-3”

(Emphasis ours.)

Thus it is clear that there was in the possession of the Company on November 12, 1959, a communication from Mr. Shaver to the Pullman Company “concerning actions of Pullman Conductor Williams”. Certainly, the communication dated November 9, 1959, was available to the Company and it did concern “the actions of Pullman Conductor Wil-

liams". This communication was NEVER revealed to Conductor Williams nor was it made a part of the record. By suppressing this communication from the record, the Company denied not only a fair and impartial hearing to Claimant Williams but denied to this Board any possibility of making a determination of whether this communication could or could not be considered an "original complaint or written report" as comprehended by the Agreement.

The Referee summarily dismissed the contention of the Petitioner that this communication constituted the original complaint or written report as follows:

"The contention by Petitioner that a communication, not contained in this record, from Superintendent J. A. Shaver, Missouri Pacific Railroad Company dated November 9th, 1959, constituted a complaint or written report is without merit and cannot be sustained. To hold otherwise would involve pure conjecture and speculation as to the nature and content of the undisclosed communication. It therefore necessarily follows that Rules 49(b) and 49(d) were not violated." (Emphasis ours.)

It is not conjecture that some advice in this matter was given the Company dated November 9 nor is it conjecture that the Company acknowledged receipt of this advice, nor is it conjecture that the Company is obligated to divulge ALL information bearing upon the disciplinary action taken, if it (the Company) is to be adjudged as having conducted a fair and impartial trial.

The Company violated Rule 49 of the Agreement by not affording a fair and impartial trial and in addition suppressed evidence essential to a proper determination by this Board of this dispute.

The Referee compounded this violation by condoning this action in stating:

"From a careful study of this entire record we find that Conductor Williams was guilty of using profane language as charged and that the 7¾ days suspension imposed was not unjust, capricious, unreasonable or arbitrary and that Claimant had a fair and impartial hearing." (Emphasis ours.)

The Award is manifestly incorrect and I dissent.

R. H. Hack

Labor Member