

**Award No. 11679**

**Docket No. PC-13752**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Charles W. Webster, Referee**

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**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 H. W. Cundiff, Chicago District, that The Pullman Company acted arbitrarily and capriciously when:

1. Under date of December 21, 1960, Conductor Cundiff was discharged from the service of The Pullman Company.
2. The discipline administered (dismissal from the service of the Company) was unjust.
3. The Pullman Company be ordered to reinstate Conductor Cundiff, with seniority and vacation rights unimpaired, and that he be compensated for all time lost.

**OPINION OF BOARD:** The Claimant in this case was discharged for a Rule G violation. Before proceeding to the merits there is one procedural point which needs to be considered.

The Carrier contends that in light of the fact that nineteen months elapsed between the appeal to the Carrier's highest officer and the notice of submission to the Board that this claim should be barred by laches. Laches is a principle of equity and this Board has consistently held that it does not have equitable powers. This does not mean that a claim may not be barred by failure to comply with the Railway Labor Act. In this case there is no time limit rule in the Agreement and without a time limit rule it is the judgment of this Referee that the Carrier must do more than make a mere assertion of laches here to bar the claim. If the claim had, in fact, been completely settled on the property, the Carrier should have submitted proof.

As to the merits, the Claimant was discharged after a hearing for being under the influence of intoxicating beverages. A detailed setting out of the evidence is not necessary, as there is sufficient evidence, if believed, to meet the standard of reasonable doubt as set forth in the Agreement.

The Organization has objected to the introduction of a statement by an employe of the Carrier without having this employe available for cross examination. An analysis of the statement of the primary accuser who was present, shows that the second statement was merely corroborative of the statement of the primary accuser. It is, therefore, our judgment that since there was no new evidence in the statement and as the second employe was not "immediately available" the Carrier did not violate the Rules of the Agreement.

The Organization has urged that the penalty attached here is arbitrary and capricious and has pointed out the large number of commendations the Claimant has received. However, in light of the fact that the Claimant had, within the previous two years, received a suspension of sixteen days for violation of the same rule, we cannot state that the Carrier was arbitrary and capricious.

**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 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 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 8th day of August 1963.