

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor W. T. Martin, Chicago Western District, who was discharged on June 21, 1938, asks immediate reinstatement to his position as Pullman Conductor with all rights unimpaired and pay for time lost."

EMPLOYES' STATEMENT OF FACTS: "This grievance has been progressed in the usual manner under the rules of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit 'A.'"

"Conductor W. T. Martin, Chicago Western District, was discharged on June 21, 1938, for alleged misconduct with a woman coach passenger. The history of the case as developed at the first hearing with District Superintendent Jones is contained in Exhibit 'B'."

CARRIER'S STATEMENT OF FACTS: "W. T. Martin of the Chicago Western District was the Pullman conductor on Pennsylvania Railroad Train No. 58, the Liberty Limited, leaving Chicago at 3:10 P. M. April 17th, 1938, arriving Washington at about 8:50 A. M. April 18th, 1938. Mrs. John R. Wolff, a Government employe of Washington, D. C., was a coach passenger on this train between Englewood and Washington."

"During the evening of April 17th Conductor Martin inquired of the coach passengers whether they desired sleeping accommodations. Having solicited Mrs. Wolff, he later showed her a roomette in the Pullman car, City of St. Louis. During his demonstration of the roomette accommodations Conductor Martin made improper advances to Mrs. Wolff. Because of her fright and resultant nervousness, Mrs. Wolff did not purchase Pullman accommodations, but remained in the day coach all night. Mrs. Wolff presented a claim for damages against the Company because of injuries she received at the hands of Conductor Martin. This claim was settled for \$400.00."

"Conductor Martin was withheld from service pending investigation of Mrs. Wolff's complaint, from May 1st to June 21st, 1938. On conclusion of the investigation, Conductor Martin was discharged. Protesting his dismissal, he filed a grievance with District Superintendent H. G. Jones on July 1st, 1938. A hearing before District Superintendent Jones was held on July 11th, following which Mr. Jones rendered a decision declining to restore Martin to service. This decision was sustained on appeals to Superintendent R. J. Ruddy and Assistant to Vice President, B. H. Vroman."

versity, is of irreproachable character. Mrs. Wolff's complaint received the most thorough investigation. It was only after this investigation, and consideration of all its aspects, that her claim for damages was settled by payment of \$400.00.

"The booklet, Instructions to Conductors, a copy of which was furnished Mr. Martin, contains the following:

'The reputation of the service depends as much upon the efficiency of employes as upon the facilities provided by the Company for the comfort of its patrons; it is imperative, therefore, that employes in serving passengers be **obliging and courteous at all times**—alert to anticipate their wants and diligent and cheerful in executing orders.'

Under 'Discipline,' the Instructions contain the following:

' * * * immorality, * discourtesy to passengers, * false reports, or concealing facts concerning investigations, * will subject the offender to dismissal.'

"A comparison of Martin's first two statements (Exhibits 'B' and 'C') with his third (Exhibit 'D') furnishes convincing evidence that he not only concealed facts but falsified them. This is also true with respect to the oral information he gave District Superintendent Jones, as reported by Mr. Jones on April 27th, 1938. The very fact that Martin withheld information is indicative of recognition of his own guilt. In his demonstration of the roomette accommodations there was no occasion for Conductor Martin to sit down. There was still less justification for his sitting beside Mrs. Wolff, which he admits to have done. The room light should not have been extinguished prior to Mrs. Wolff's departure. Martin admits having done this. Under the circumstances, Martin's admission that he threw his arm round Mrs. Wolff is highly incriminating. The offer of a place to sleep without cost strongly supports the charge of improper advances.

"This Company enjoys a well deserved reputation for furnishing service with protection to its patrons, particularly its women passengers. This reputation must be jealously guarded. The Company cannot afford to have the comfort and safety of its women passengers jeopardized by even the slightest acts of over-familiarity on the part of its employes. Martin has admitted almost all of Mrs. Wolff's charges of serious misconduct. His discharge was entirely justified.

"This Division has repeatedly stated in its awards that the control by the employer over the employe should not be interfered with in the absence of clear abuse of discretion. There has been no abuse of discretion in the action taken in the case of Conductor Martin."

OPINION OF BOARD: This employe was discharged for alleged misconduct towards a woman passenger traveling on a train on which he was the Pullman Conductor. If he was guilty of the misconduct with which he was charged, he was properly dismissed from service. However, he denies his guilt and the record indicates that he may not have been accorded a fair opportunity to properly defend himself against the charge.

The record shows that the alleged misconduct with which he was charged formed the basis of a claim for damages against the Pullman Company which was settled for \$400—probably less than it would have cost to defend a suit for damages. The transcript of the hearing, held at the request of the employe after he had been discharged and after the claim for damages had been presented, shows that the name of the person charging him with the alleged misconduct was withheld from the employe although demand was made that it be furnished. The record elsewhere indicates that the employe knew the name of his accuser prior to the hearing but as to this there is sufficient conflict to leave the question in doubt.

In a case of this character involving as it does a charge of sufficient import not only to warrant but in the public interest to require the discharge of the employe, full opportunity should be accorded the employe, for the sake of his good name as well as his job, to defend himself against the charge preferred against him. And when the accusation constitutes the basis of a claim for damages, as in this case, there is no justification for withholding the name of the accuser from the employe.

The Board is of the opinion that the employe was not accorded a full opportunity to defend himself against the charge and the case should be remanded for further hearing.

The prevailing agreement between the parties authorizes the discharge of an employe without hearing and this procedure was followed in this case. The order for a rehearing therefore does not restore the employe to service but simply accords him an opportunity to have the charge against him reheard. Rule 50 governs in case the employe is cleared of the charge on rehearing.

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 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 this case should be remanded for rehearing in line with opinion.

AWARD

Case is remanded for rehearing in line with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of June, 1939.