

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of John Small who was formerly employed as a porter by The Pullman Company operating out of the District of St. Louis, Missouri, because The Pullman Company did on January 5, 1939 discharge John Small from his position as a porter in the above mentioned district on the alleged charge of 'violation of existing regulations, failure to issue cash fare checks and failure to make proper accounting for and deposit of revenues collected from passengers for the Company, etc.'; and because the alleged charges are unproven, and the action taken in so discharging John Small is unjust and without sufficient reason. And further, for the restoration of John Small to his former position as a porter in the District of St. Louis, Missouri without loss of seniority and with pay for all time lost by reason of such unjust and unreasonable discharge."

EMPLOYEES' STATEMENT OF FACTS: "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly designated and authorized representative of all Porters, Attendants and Maids in the employ of The Pullman Company, under the provisions of the Railway Labor Act.

"Your petitioner further represents that in such capacity it is duly authorized to represent John Small who was formerly employed as a porter for The Pullman Company in the district of St. Louis, Missouri from on or about the 19th of May, 1925 until January 5, 1939.

"Your petitioner further sets forth that Small was regularly assigned to Line 3373, St. Louis, Missouri to Pine Bluff, Arkansas, which is a porter-in-charge service. And that while making one of his regular trips in said line, St. Louis to Pine Bluff, August 7-8, 1938, that he sold space in car commonly known as an S. O. S., this space being sold to the occupant in lower 12 for the sum of \$1.05.

"Your petitioner further sets forth that only one such S. O. S. space was sold in the car on said trip, but that through some error the check was cut for section 11 which should have been cut for section 12.

"Your petitioner further states that charges were filed against Porter Small under date of December 10, 1938 that Porter Small 'failed to issue cash fare checks' and 'failed to make proper accounting for and deposit of the revenue collected from passengers for the occupancy of accommodations in that car.'

"Hearing on these charges was held in St. Louis, Missouri, December 27, 1938, after which John Small was discharged from his position as a porter in the St. Louis District by Superintendent L. P. Hanson of said district.

'Report of cash collections, Form 93,9143, for each car will be made out by each conductor or porter in charge and will be placed with diagram of each car * * *.'

"In spite of these instructions Small reported only one of two single occupancy sections sold by him. He overcharged for that one, but reported its sale on the Company's portion of the cash fare check at the correct rate. Examination of the passenger's and auditor's portions of cash fare check No. BB-77233 shows that Small punched these singly in violation of instructions as admitted by him (p. 21, Exhibit A). Small issued no cash fare check on receipt of \$1.05 from Mr. Gandy for single occupancy section No. 12. Small neither reported the sale of single occupancy section No. 12, nor deposited the money received therefor.

"The Book of Instructions to Porters states:

'* * * Disloyalty, dishonesty, * * * gross carelessness, false reports, or concealing facts concerning investigations, etc., will subject the offender to dismissal.'

In view of the deliberate violations of instructions, and Small's failure to account for and deposit cash collected by him, his dismissal was fully justified. His claim should be denied.

"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 with Porter Small."

OPINION OF BOARD: Our function in this case is not to substitute our judgment for that of the carrier or to determine what we might or might not have done had the matter been ours to handle. We are entitled to set aside the carrier's action only upon a finding that it was so clearly wrong as to constitute an abuse of the discretion vested in the carrier. We have carefully reviewed the evidence and have concluded that we could not within the limitations imposed on us, make such a finding.

As to the propriety of the hearing, fair procedure required a disclosure of the address of Mr. Norman in order that the employes might have an opportunity to communicate with him and to inquire into the statements contained in his letter. At the hearing, however, the carrier's representative informed the employe's representative that he thought Mr. Norman's address could be obtained if it was desired. No response to this suggestion was made, nor does it appear that the employes made any further request or effort to get in touch with Mr. Norman, either during or after the hearing.

The chief charge of unfairness is that the carrier instructed the train auditor not to give the employes a written statement—an instruction which, if true, was improper; but the employes interviewed the auditor and reported his statement themselves to the effect that, like the conductor, he was certain only one single occupancy section had been made up. Had this statement been signed by the auditor instead of reported by the employes it would have made no substantial difference, because the conductor's envelope, checked by the auditor and introduced at the hearing, showed only lower berths and no single occupancy sections—a fact which casts some doubt on the accuracy of the recollections of both the auditor and conductor.

Under these circumstances there is no ground for a re-hearing, nor has a re-hearing been asked for.

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 the evidence is not sufficient to justify the Board in revising the action taken.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1939.