

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY**

STATEMENT OF CLAIM: "For and in behalf of Joe Lewis who was formerly employed by the Pullman Company as a porter operating out of the Chicago Northern District. Because the Pullman Company did, on April 7, 1939, discharge Joe Lewis from the service, which discharge was unjust and unreasonable and based upon alleged charges unproved, and upon which charge Joe Lewis had been previously either disciplined or exonerated, and further, because Joe Lewis did not have a fair and impartial hearing as is provided for under the agreement then and now in force between the Pullman Company and its Porters, Attendants and Maids, and for the restoration of Joe Lewis to his former position as a porter in the Chicago Northern District with his seniority unimpaired, and with pay for all time lost by virtue of this unjust and unreasonable discharge."

EMPLOYES' STATEMENT OF FACTS: "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully represents that it is the duly designated and authorized representative of all porters, attendants and maids in the service 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 Joe Lewis who was formerly employed by the Pullman Company in the Chicago Northern District from April 11, 1927 until April 7, 1939.

"The petitioner further represents that for several years prior to April 7, 1939 Joe Lewis was operated in regular assignment on line 302 1/2, tourist car service, on Chicago and North Western and Union Pacific Railroad, on train known as the Challenger.

"The petitioner further represents that Joe Lewis was due out on his regular assignment on or about February 3, 1939, and that on the day that he was due out on this particular trip he was informed that he was not to go out and that he was being held out of service pending investigation.

"The petitioner further states that as the duly authorized representative of Joe Lewis, it did, under date of February 24, 1939, request of the respondent Company written statement of the reason why Lewis was held out of service, and for a hearing to determine the issues in the case, to which the respondent Company replied contending its right to hold Lewis out without giving the reasons or granting the hearing requested.

By no possible stretch of the imagination can three, or four, trips be described as frequent in a four-hour period. The 'usual number of trips' for Lewis may be from every sixty to ninety minutes, but the usual number of trips, at frequent intervals, as contemplated by the instructions, must be from every fifteen to twenty minutes.

"On the night of September 23rd-24th, 1927, a passenger on Lewis' car sustained a loss of \$61.00. So secretive, and evasive, was Lewis following the loss (pp. 4, and 5, Exhibit A) that the passenger charged him openly with the theft. On September 28th, 1935, a passenger in Lewis' car lost \$20.00. On the night of September 22nd-23rd, 1937, a passenger in a car in which Lewis had been on guard from 2:00 A. M. to 6:00 A. M., had \$10.00 stolen from him. On March 5th-6th, 1938, a passenger in Lewis' car had a card case, containing a \$50.00 bill, stolen. On October 18th, 1938, a passenger on Lewis' car discovered the loss of \$15.00 from his wallet. Since, immediately prior to the discovery of the loss Lewis had brought this wallet to the passenger at the latter's request, Lewis was held out of service at Omaha for further investigation of the matter. After a district hearing on December 28th, 1938 (see pp. 53 to 71, Exhibit A), Lewis was paid for the time he was held out of service. On November 2nd, 1938, a passenger, an occupant of the car adjacent to Lewis' car, reported that \$10.00 had been stolen from him the night of October 31st, and \$50.00 the night of November 1st, 1938. Lewis was on guard in this car on both of these nights from 2:00 A. M. to 6:00 A. M. Ten dollars was stolen, the night of December 5th-6th, 1938, from the billfold of a passenger, who occupied space in the car guarded by Lewis from 2:30 A. M. to 6:30 A. M., that night. On the same trip, during the night, of December 7th-8th, \$10.00 was stolen from a passenger, occupying lower berth No. 5 in Lewis' car. All of these losses most seriously reflect upon the guarding by Lewis of cars in his charge.

"The standard of Pullman service is largely dependent upon Pullman employes. As an indispensable means of maintaining this standard of service, the following provisions of the book of Instructions must be rigidly enforced:

'The Company requires of employes the best service possible under all conditions. * * * Individual record is kept of each employe and every case of negligence or improper conduct with penalties assessed will be entered thereon, and the employe notified of the action taken.

'When an employe's record shows frequent derelictions of duty or violations of rules, the question of his retention in the service will have special consideration, and dismissal may follow because of unsatisfactory service in general. Disloyalty, dishonesty, * * * insubordination, incompetency, discourtesy to passengers, gross carelessness, false reports, or concealing facts concerning investigations, etc., will subject the offender to dismissal.'

Lewis' continued service derelictions, his numerous failures to guard his car, and his appalling loss record prove either an inability, or as evidenced by the instances of his insubordination, an almost complete lack of intention to follow instructions issued only in the best interests of the employes and the Company.

In its Award No. 562, this Division has recognized the propriety of basing disciplinary action upon a record as a whole. Further, this Division has repeatedly held, in its awards, that management is justified in assessing discipline upon its employes who fail to be governed by existing regulations. The Division has repeatedly stated that the control by the employer over the employe should not be interfered with in the absence of clear abuse of discretion. In the discipline administered to Lewis there has been no abuse of discretion. His extremely poor record proves his discharge to have been entirely justified. His claim should therefore be denied."

OPINION OF BOARD: The claim, the facts, the positions and the contentions of the parties are sufficiently set forth hereinabove.

Joe Lewis, who had been employed as porter by The Pullman Company for about twelve years, was discharged April 7, 1939, and asks for restoration to his former position, claiming that the discharge was unjustified and unreasonable and based on charges previously disposed of and that he did not have a fair and impartial trial.

As Dean Garrison said in Award Number 891:

"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. * * * *"

After a thorough and careful consideration of the whole record, the Board is of the opinion that the contentions of the petitioner are not sustained and that the carrier sustained its contention that Mr. Lewis was discharged because of a generally unsatisfactory record. It appears beyond question that he was several times insubordinate to his superiors, that he was several times asleep while required to be on duty, that on several occasions he left his post while he, alone, was guarding a Pullman car occupied by sleeping passengers, and that the employer was obliged to pay damages on at least two occasions for his negligence in the performance of his work.

One of the complaints the Brotherhood urged in his behalf was that some of the charges were stale and some of the evidence against him referred to things that occurred soon after he was employed in 1927. We think that complaints throughout the time of his employment, whatever discipline may have been applied from time to time, were pertinent upon the question of his general unsatisfactory service.

The carrier offered sufficient proof of these charges against the petitioner to justify his dismissal upon the grounds of unsatisfactory service. We do not think this Board would be justified in attempting to interfere with carrier's disciplinary action and the claim will be denied.

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 there was sufficient proof of charges against the petitioner mentioned in this opinion to justify his dismissal.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1940.