

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of W. Howell who is now and for a number of years past has been employed by The Pullman Company as an Attendant operating out of the Pennsylvania Terminal District, New York City. Because The Pullman Company did, under date of July 11, 1941, discipline Attendant Howell by giving him an actual suspension of thirty days on charges unproved; which action was unjust, unreasonable and in abuse of the Carrier's discretion. And further, for Attendant Howell to have his record cleared of the charges involved in this case and to be reimbursed for time lost by virtue of this unjust, unreasonable and arbitrary action.

OPINION OF BOARD: Attendant W. Howell on whose behalf this claim is presented was operating on a club lounge car between New York and Miami during the times in question and was specifically charged with serving an orangeade that was improperly prepared, failure to handle beverage checks in accordance with instructions, failing to account for Company's funds concerning the sale of an orangeade, and failure to wear identification badge on the trip of January 28-31, 1941. Also he failed to wear a badge on the trip of February 20-23, 1941, and also on the trip March 26-29, 1941 he served orangeades which were improperly prepared and failed to properly account for the Company's funds concerning those sales.

As to the January 28-31, 1941 trip no evidence was presented except on unidentified and unsigned Inspector's report which was not evidence. The charges were denied by Howell and will be disregarded. The failure to wear identification badge is also sufficiently explained.

As to the later trips the evidence against the Attendant consists entirely of a statement by an Inspector by the name of H. J. Wahrer, and the substance of his statement is as follows. That leaving New York he purchased an orangeade which he said was very weak. It was, however, properly paid for and receipted; that entering the station at Washington he ordered another orangeade which he said was very weak and for which he said the Attendant issued no receipt; that at 11 o'clock that night he ordered another orangeade which he said tasted like the other two, but for which a receipt was properly punched, and that he thereafter ordered a cheese sandwich which was served and prepared properly and correct check was presented to cover. He further testified that the next morning he ordered an orangeade which was served the same as before and received proper receipt for the orangeade and a package of Chesterfields. It was the statement of this witness that he had purchased four orangeades for the trip from New York but had only gotten receipts for three of them. On arrival at West Palm Beach he met the Commissary Inspector by the name of Armstrong and told him that the Attendant

should account for six orangeades and two lemonades. This Inspector went with Mr. Armstrong and made a check of the Commissary supplies which checked out all right. He accused the Attendant of having sold six orangeades and only accounted for four and the Attendant denied it. He also at that time and place accused the Attendant of having served a lady and child with an orangeade and coca cola for which he had made out no check. The Attendant denied this charge and the witness and Mr. Armstrong and the Pullman Conductor went back to interview the lady, who said that she remembered that the Attendant had given her a check of some kind. It is unnecessary to say anything more about this Inspector's statement because there is nothing else in it that is of any importance in this hearing. He does say in the statement however that the Attendant demanded to speak to the lady passenger and that the interview had with her was at his request and upon his insistence. In as much as all of the supplies checked out correctly the most that can be made of it if it is given full value, is that this Attendant might possibly have put an insufficient amount of juice in some orangeades so as to make the supplies for four orangeades produce six orangeades.

The evidence submitted by District Commissary Inspector Armstrong of West Palm Beach shows that he entered the train, checked the lemons against the checks cut for lemonade, checked the oranges against the checks cut for orangeades and checked the coca cola against the checks cut for the same, and found them all correct. The Pullman Conductor on this train submitted the following report:

"4-1-41

Mr. E. P. Schwotzer
Dist. Supt.

Dear Sir:

I was Conductor on PRR 117—SAL No. 7 leaving New York on March 26-41. Leaving W. P. Beach we had Mr. Armstrong board the train and went to the club car Long Island and check up the buffet and found everything O. K. He then went back to the rear to check the buffet on the rear. In about an half hour, he came back with another man who said he was an inspector and wanted to see the buffet checks. He checked them up and said that there were only checks for four orangeades and should be checked for 6. He said that Attendant W. Howell served 1 orangeade to him and one to a lady but did not give them a check for it. The lady was in the club car at the time and I interviewed her and she said that the attendant did give her a check and I went back and told him what the lady said. He then went and interviewed her and when he came back he said that the lady said that the attendant gave her a check. Mr. Armstrong said that we would like to look in attendant Howell's grip will he let us look in it. I replied why I think he will and then ask Howell if he wanted to let them look in his grip which he replied 'why, yes.' He let them look in his grip and then said I have a brief case you can look in that too. After that the inspector and Attendant Howell went back and interviewed this lady again. I do not know what was said then. This for your information.

Yours respectfully,

(Signed) C. H. Wiltsie
Conductor P. T."

Attendant Howell submitted a full written report covering all of these matters and protesting against the manner in which the Inspectors had treated him on his car in the presence of the public. It is unnecessary to go into it in detail in the view we take of the record. It is enough to say that he denied all of the charges against him and explained as to his failure to wear a badge that the pin was loose and that he would be charged with it if it was lost.

Attendant Howell testified at the hearing and again denied all of the charges and fully explained every item of his service record, which was introduced in evidence.

The weight of all the evidence in this case and of all the circumstances shown is entirely in favor of the employe, Attendant Howell. The evidence submitted by Inspector Wahrer is not only contradicted by the Attendant himself but by the Commissary Inspector, the Pullman Conductor and the lady passenger. This evidence contradicts itself in the matter of coca cola because the Inspector was quite positive that coca cola had been served without a check whereas the physical inventory and the checks themselves showed every bottle accounted for. The Attendant demanded the right to interview the lady passenger and she agreed that the Attendant had given her checks for her purchases, and this is verified by the Pullman Conductor, the Commissary Inspector, the Attendant himself, the inventory of supplies and the checks that had been issued. There is a rule of law that if a witness has testified falsely to one thing that it will be taken for granted that the rest of his testimony is valueless and it will not be given any weight except where corroborated. The evidence of Inspector Wahrer as to the coca cola is definitely proved to have been untrue, and he is not corroborated in anything he says.

The record is somewhat lengthy but it is largely repetitious and we find it unnecessary to examine it in detail. As the matter is presented to us we are of the opinion that the discipline in this case was founded on charges which were not only unproved but which were proved to be untrue, and that the action of the Company in suspending this Attendant for 30 days was unjust; that his record should be cleared of the charged involved in this case and that he should be reimbursed for time lost by reason of this charge.

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 charges are proved to have been untrue and discipline undeserved.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of September, 1942.